CONTRACTS IN THE OLD TESTAMENT:
A FORM CRITICAL INVESTIGATION

A Dissertation
Presented to the Faculty
of the
Graduate School
of
YALE UNIVERSITY

in Candidacy for the Degree
of
DOCTOR OF PHILOSOPHY

1963

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SUMMARY

In the Old Testament there are many oral and written formulae which were used in civil legal ceremonies. By means of a detailed elaboration of those formulae it is possible to reconstruct the legal ceremonies themselves. One common civil ceremony in Ancient Israel took place when land or other important property items changed hands. This contract ceremony included two stages, Legal Negotiations and the solemnization of the contract. The Legal Negotiations followed a more or less standard pattern, proceeding with speeches by both of the parties, each attempting to make the settlement most satisfactory to himself. When agreement had been reached and expressed, the second stage of the process began. The negotiations were oral, and usually took place before the court itself. But the contract which solemnized the agreement could be either oral or written. The written contract required the presence of witnesses, and it was necessary for the oral contract to be formalized before the court assembled "in the gate," the public square of the Israelite city.

Certain texts in the Old Testament reveal that rituals of acquisition could either accompany or replace parts of the sale contract. Such acts as walking over a plot of land or handing another person a shoe were considered formal acts which were legally effective.

There were other legal ceremonies and formulae in Israel related to the sale contract. The hiring contract used formulae similar to the Legal Negotiations, but the contract of hire was not solemnized before the court as was the sale contract. The marriage ceremony is another civil process which can be partially reconstructed from the stereotyped expressions used therein. There were, in fact, two ceremonies in the marriage process, a betrothal ceremony and a marriage feast. The betrothal ceremony was the legally effective stage in the marriage; a betrothed woman was considered legally married. Like the oral sale contract, the oral betrothal ceremony took place before the Israelite court. A comparison of the formulae of the marriage ceremony with those of the sale contract indicates that the marriage agreement was formally and legally identical to the sale contract. The bride was legally the object of transfer.

The covenant is another type of agreement which has often been loosely classified with the contract. A comparison of the forms of the covenant with the contract forms indicates, however, that covenants were not contracts. Both in terms of form and content they were related but distinctively different types of agreement. Old Testament covenants, both those among human partners and those between God and man, unlike contracts, are structured around an oath formula. Covenants then are mutual pledges of loyalty. The covenant between God and his people is understood in the Old Testament on the analogy of covenants among men and international treaties rather than on the analogy of economic contracts.

On the basis of the legal formulae reconstructed here as well as others already elaborated, it is possible to understand the functions of the Israelite law court. The court acted in criminal cases, and in civil lawsuits between rival claimants to some right. The court also served a notary function in validating contracts for the sale of major property items as well as marriage contracts.

Some conclusions may be drawn about the history of the contract formulae. It is possible to see that the written contracts have developed out of oral contracts, that covenants and contracts developed along separate lines, and that prophets and poets have appropriated many of the forms of the contract in the service of their messages.

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In the Old Testament there are many oral and written formulae which were used in civil legal ceremonies. By means of a detailed elaboration of those formulae it is possible to reconstruct the legal ceremonies themselves. One common civil ceremony in Ancient Israel took place when land or other important property items changed hands. This contract ceremony included two stages, Legal Negotiations and the solemnization of the contract. The Legal Negotiations followed a more or less standard pattern, proceeding with speeches by both of the parties, each attempting to make the settlement most satisfactory to himself. When agreement had been reached and expressed, the second stage of the process began. The negotiations were oral, and usually took place before the court itself. But the contract which solemnized the agreement could be either oral or written. The written contract required the presence of witnesses, and it was necessary for the oral contract to be formalized before the court assembled "in the gate," the public square of the Israelite city.

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To Charky

ACKNOWLEDGMENTS

This dissertation owes its inception and its final form to the interest and assistance of many people. It is with a deep sense of gratitude that I express my appreciation to those who have contributed most to the project. I am indebted to Prof. Brevard S. Childs who first introduced me to form criticism and who pointed out the need for a study of the forms of Old Testament contracts. The work was begun under his direction and has profited from his constant encouragement. Prof. Marvin H. Pope has read the typescript and offered innumerable suggestions, both with regard to content and style. He has called my attention to many of the Ugaritic parallels to the Hebrew formulae. I am also obligated to Dr. Erhard Gerstenberger who has read the dissertation with great care, offering incisive suggestions which have contributed materially to the present form of the study. Finally, I am grateful to my fellow student Richard B. Kenney who has freely given of his time to assist in proof reading the final draft.

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AASOR	*Annual of the American Schools of Oriental Research.*
ANET	J. B. Pritchard (editor), *Ancient Near Eastern Texts Relating to the Old Testament.*
ARM	André Parrot and Georges Dossin (editors), *Archives Royales de Mari.*
BASOR	*Bulletin of the American Schools of Oriental Research.*
GKC	*Gesenius' Hebrew Grammar,* edited and enlarged by E. Kautzsch, revised and translated by A. E. Cowley, second English edition, 1910.
HSS	*Harvard Semitic Series.*
ICC	*The International Critical Commentary.*
JAOS	*Journal of the American Oriental Society*
JBL	*Journal of Biblical Literature and Exegesis.*
JNES	*Journal of Near Eastern Studies*
JQR	*Jewish Quarterly Review.*
JSS	*Journal of Semitic Studies.*
KB	L. Köhler and W. Baumgartner, *Lexicon in Veteris Testamenti Libros.*
OTS	*Oudtestamentische Studien.*
PEQ	*Palestine Exploration Quarterly.*
PRU III	Jean Nougayrol, *Le Palais Royal D'Ugarit,* vol III.
RSV	*The Holy Bible, Revised Standard Version.*
SMN	Catalogue numbers of the Harvard Semitic Museum Nuzi Tablets.
ThLZ	*Theologische Literaturzeitung.*
UL	C. H. Gordon, *Ugaritic Literature.*
UM	C. H. Gordon, *Ugaritic Manual.*
VT	*Vetus Testamentum.*
ZAW	*Zeitschrift für die Alttestamentliche Wissenschaft.*

INTRODUCTION

Since the advent of form criticism as a tool of Biblical study, most of the genres of Old Testament literature have undergone penetrating, and in many cases repeated, form critical investigation. Hermann Gunkel, the pioneer of the method in Biblical study, examined the prose forms of the Pentateuch,[1] the cultic poetry of the Psalms,[2] and established the categories of many other types of Hebrew literature.[3] Other major strides in the history of form criticism include the examination of credal material by Gerhard von Rad[4] and the study of Old Testament law by Albrecht Alt.[5]

Following Alt's lead, many recent studies have applied the form critical tools to the legal traditions of Israel. But for the most part, contemporary works have investigated either the law codes themselves,[1] or the forms of the criminal trial.[2] There have also been studies of the relationship of law to the formulae of the covenant ceremony.[3] But thus far a form critical study of the legal expressions from the sphere of "civil" law has not been produced. Most studies which deal with the civil legal affairs of ancient Israel are broad sociological or economic treatments, such as Ancient Israel, by R. de Vaux[4] or Johs. Pedersen's Israel, Its Life and Culture,[5] books which accord scant chapters to this subject. On the other hand, some of the more obvious elements of the civil formulae have been named by form critics,[6] but an exhaustive study is lacking. What is especially needed is a study of the contracts of the Old Testament. Aage Bentzen called attention to this need in 1948, and it still remains. "It would be a useful work," he said, "to give a full description of the various forms of oriental contracts."[7]

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[1] Hermann Gunkel, Genesis übersetzt und erklärt, second ed. (Göttingen: Vandenhoeck und Ruprecht, 1902).

[2] Hermann Gunkel and J. Begrich, Einleitung in die Psalmen (Göttingen: Vandenhoeck & Ruprecht, 1933).

[3] H. Gunkel, Das Märchen im Alten Testament (Tübingen: J. C. B. Mohr, 1917); H. Gunkel, Die Propheten (Göttingen: Vandenhoeck & Ruprecht, 1917).

[4] Gerhard von Rad, "Das formgeschichtliche Problem des Hexateuch," in Gesammelte Studien zum Alten Testament (München: Chr Kaiser Verlag, 1958), pp. 9-86.

[5] Albrecht Alt, "Die Ursprünge des Israelitischen Rechts," in Kleine Schriften zur Geschichte des Volkes Israel (München: C. H. Beck'sche Verlagsbuchhandlung, 1959), pp. 278-332.

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[1] Erhard Gerstenberger, Wesen und Herkunft des Sogenannten Apodiktischen Rechts im Alten Testament (Dissertation, Bonn: Rheinische Friedrich-Wilhelms-Universität, 1961); G. Heinemann, Untersuchungen zum apodiktischen Recht (Dissertation, Hamburg: 1958); R. Rendtorff, Die Gesetz in der Priesterschrift. Eine gattungsgeschichtliche Untersuchung (Göttingen: Vandenhoeck & Ruprecht, 1954).

[2] Cf. the excellent dissertation of Hans Jochen Boecker, Redeformen des Israelitischen Rechtsleben (Bonn: Rheinische-Friedrich-Wilhelms-Universität, 1959). Boecker does, however, devote some attention to the Zivilprozesse, pp. 163 ff.

[3] K. Baltzer, Das Bundesformular (Neukirchen: Kreis Moers, 1960).

[4] R. de Vaux, Ancient Israel, its Life and Institutions, translated by John McHugh (New York: McGraw Hill, 1961), pp. 65 ff.

[5] Johs. Pedersen, Israel, Its Life and Culture, 4 vols (London: Oxford University Press, 1926-1940, reprinted in 1954), Vol I/II, pp. 81-96, 263-310.

[6] A. Bentzen, Introduction to the Old Testament (Copenhagen: G. E. C. Gad, fifth edition 1959, first printed 1948), pp. 209 ff.

[7] Ibid., p. 211.

This work is an attempt to meet the need for a full description of the forms of the Old Testament contract. Broadly speaking, this study is an investigation of some of the formulae out of the sphere of civil law in the Old Testament, that is, it deals with the non-criminal procedures before the Israelite court.[1] More specifically, our aim is to identify and describe the forms used in the civil agreements--the contracts--of the Old Testament and thus reconstruct the legal ceremonies in which these forms had their Sitz im Leben. It is the thesis of this study that a long, complicated and formalized oral ceremony lies behind the contract forms of the Old Testament, and that this ceremony can be reconstructed from the texts which have been transmitted to us.

We shall begin the reconstruction of the legal ceremony by concentrating on the negotiations for the transfer of land and other major property items, such as slaves. This ceremony is best characterized as "legal negotiations," for it takes place before the assembled court and is followed by the drawing up of a contract. Not all sales, of course, had to be solemnized by the court, but part of our task will be to determine precisely which negotiations were affairs of the court and which were merely private affairs. It seems clear from the outset that the bargaining over minor commodities in the market places is not to be classified as legal negotiations. Though these affairs no doubt had their own customary formulae, sales of minor items would not even require the presence of witnesses, and surely not the formal presence of the court.

After investigating the forms and procedures of the court in the transfer of property, we shall then turn to some other ceremonies of the civil court process. On the basis of the forms and procedures of the court in solemnizing property transfer, we shall examine lawsuits, hiring contracts, the marriage and betrothal ceremonies, international treaties, and the forms of the covenant in relation to the forms of the contract.

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[1] For a discussion of the distinction between civil and criminal procedures in the Old Testament, cf. below, **Conclusion**, part b.

While the primary purpose of this project is to classify and describe the forms of the contract and reconstruct the contract ceremony, there are other possible implications of the work. Most obvious is the contribution to Old Testament history, especially the history of social, economic, and legal institutions. One can also expect contributions to the exegesis of the Old Testament through the explanation of confusing texts--especially prophetic and poetic passages--as elements of the contract or allusions to some legal ceremony. And theological contributions may be anticipated in any study of Hebrew law. In this case we hope to contribute to the understanding of the meaning and function of the covenant and covenantal forms. One may perhaps also expect illumination on the issues of the Old Testament ideas of property and ownership, legal rights, and marriage, including the often debated issue of whether or not the Israelite wife was considered a chattel. Our study should provide some of the background for the understanding of Israelite social ethics, especially in view of the prophetic interest in property rights.

Fortunately, the trail which we shall follow into the Hebrew legal institutions has been blazed well, since many aspects of the court and the legal process have already been examined. The best introduction to the Israelite legal institutions is Ludwig Köhler's article, "Justice in the Gate."[1] Hebrew law, Köhler points out, was essentially city or town law. Because of the natural geographic divisions of the country into small elements, legal problems had to be resolved by each community acting for itself. And it is the community acting as a whole--that is, the full citizens[2]--which deals with all legal problems. There is no evidence in the Old Testament of an Israelite judicial system which had a body of lawyers, judges, or any citizens whose special vocation was the maintenance of law and order.[3] When a crime has been committed, the community comes together to deal with the criminal. Offenders are tried before the assembled citizens, who eventually pronounce the verdict, and if necessary, the sentence. The entire process is oral, the roles of accuser, defense counsel, judge, and witness fluctuating.[4] But though the process is not practiced by a body of professional lawyers, firmly established rules of procedure have developed, reflected in the set formulae used by the parties in the trial.[5]

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[1] Ludwig Köhler, Hebrew Man, appendix "Justice in the Gate," (cont.)

We are even told many times in the Old Testament the precise location where the legal assembly carried out its functions: "in the gate." This phrase, "in the gate," is no veiled allusion to some seat of

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[1] (cont.) translated by Peter Ackroyd (New York: Abingdon Press, 1956), pp. 127-150.

[2] Ibid., p. 130: "The population of each place consists of two groups, at least as far as our present purpose is concerned. One group is composed of the full citizens, the other of the remainder of the inhabitants--women, children, slaves, and the 'stranger that is within thy gates'....Full citizens are those men who occupy their own property, who do not stand under any kind of tutelage and can claim the four great rights --marriage, cult, war, and the administration of law."

[3] Ibid., pp. 133-4. Cf. also Boecker, pp. 20 ff.

[4] Boecker, pp. 20-21; Köhler, Hebrew Man, pp. 134-5.

[5] Boecker, pp. 23 ff.

justice, but refers simply to the gate of the city, the common meeting place of the citizens. At the gate of each city there was a public square, an assembly place where the legal proceedings were held.[1]

Furthermore, we should not suppose that the business of the legal assembly "in the gate" was restricted to criminal trials, though it did handle criminal offenses. "A right of way, rights to a well, a theft of someone else's cattle, an assault which had a serious sequel, a death by violence, a claim to an inheritance--these will have been the sort of questions with which the administrators of justice concerned themselves...."[2] All of these matters are either violations of the established law or "civil" disagreements over ownership. There are indications, however, that the latitude of the Hebrew legal community was even broader. The legal community intervenes in family problems, such as the disrespectful child (Dt 21:19-20) or the failure of a man to perform the duty of the goʾel for his brother's widow (Dt 25:5-10). And in addition to settling disagreements over ownership, the court was responsible for establishing ownership by verifying sale transactions. (It is likely that the latter function developed out of the former.) This participation of the law court in the transfer of property--Boecker calls it "die notarielle Funktion"[3]--is seen clearly in the story of Abraham's purchase of a burial site from Ephron (Gen 23), which took place "before all who went in at the gate of his city." (Gen 23:10,18) And when Boaz wants to settle the affairs of Ruth and Naomi, he goes "up to the gate." (Ru 4:1)[1]

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[1] Ibid., p. 20.

[2] Köhler, Hebrew Man, p. 141.

[3] Boecker, pp. 163 ff.

The transfer of land and even some other types of property before the assembled legal body is not without analogy in the other legal traditions of the ancient Near East. Many of the Nuzi texts, for example, begin with the statement that the agreement contained in the tablet was made in court: "The tongue of Watwa son of Tabsharri in the presence of the judges (*a-na pa-ni $^{\text{Lu}}$daiāni$^{\text{meš}}$*) spoke as follows:...."[2] Furthermore, many Babylonian and Assyrian contracts appear to have been drawn up before the legal body.[3]

So the court functioned in matters of property transfer in much the same way that it functioned in other civil affairs, acting as the official body which confirmed ownership. It is in this relationship between the civil disputes and the contracts that we see most clearly the purpose for the court's function in notarizing contracts. The primary purpose of the Israelite court is to resolve conflict: "It is the organization for reconciliation."[1] The reason the Israelite court confirms transactions is in order to prevent conflict over ownership, as we shall see in detail below. Because conflicts over ownership are public problems, the solemnization of contracts is a public legal affair.

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[1] "All day long the elders move about the gate, where they are always sure of finding company, and can commune about all sorts of matters, great and trivial. Everything of any importance takes place in their presence. If a field is bought, the buyer and seller go there and ratify the purchase before the elders. There are always witnesses, and the elders are co-responsible for the legality of the transaction (Ru 4)." (Pedersen, *Israel*, Vol I, p. 36)

[2] Robert H. Pfeiffer and E. A. Speiser, *One Hundred New Selected Nuzi Texts*, *AASOR* XVI (New Haven: American Schools of Oriental Research, 1936), Text 15, transliterated on p. 20, translated on p. 80. Cf. also Text 16. On the so-called "sale-adoption" texts from Nuzi, cf. below, p. 82.

[3] "But the contract was not valid unless sealed and witnessed. The sealing was accompanied by an oath. The oath probably had to be made in court. The witnesses seem often to have been a body of men who could only be found at the court. Even when there is least trace of the law and the judge, the case is similar to others where the judge appears explicitly." (C. H. W. Johns, *Babylonian and Assyrian Laws, Contracts, and Letters* (New York: Charles Scribner's Sons, 1904), pp. 80-81.) Cf. also I. Mendelsohn, *Slavery in the Ancient Near East* (New York: Oxford University Press, 1949), pp. 41-42.

While the main emphasis of our study falls upon the court procedure of the local tribunals in the gate of each Israelite town, we should be aware that there is at least one other legal tradition in Israel, the royal. Because of the geographical diversity of Palestine, the royal tribunal was at best a higher court to which appeal could be made, seldom the judge to which problems would be first submitted. Furthermore, the kingship itself was a relatively late institution in the life of Israel. But even when the king takes over the right to judge in suits and trials, there is little if any indication that he has taken over the notary function of the court in the transfer of property.

Though some of the main lines of the Israelite legal process have been laid out, many issues remain to be resolved, especially with reference to the civil ceremonies. Our initial task is to reconstruct the civil process through the forms which belong in that process, but there are other issues which must be kept before us throughout the investigation. The most important of these issues is the question of terminology. One of our primary objects is to refine the classifications applied to Old Testament contracts and other agreements. We suspect, for example, that it is a basic error to classify covenant as a type of contract, and to loosely describe all Old Testament agreements by the same term, for example, as *Verträge*.[1] We shall try to refine these classifications by examining the formulae of the various types of Old Testament agreements and comparing the types with one another, thus showing the distinctions between the forms and functions of the sale contract and the marriage contract, the work contract and the treaty, and the relationship between covenants and contracts.

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[1] Köhler, Hebrew Man, p. 133. Cf. also Boecker, p. 23.

The question of the history of the formulae of the contract and of the civil institutions of Israel is an important issue, but will not be one of our major concerns here. We shall, however, keep the question before us primarily to ask whether or not written contracts reveal some oral ceremony and therefore written contracts originated out of oral agreements. And we shall also be observing how the formulae which have their *Sitz im Leben* in the court process have been appropriated by poet and prophet.

Many of these questions have already been raised by scholars, but they will be raised here from a different perspective. The forms of the covenant, for example, have been subjected to careful examination, but the question of the relationship of covenant to contract cannot be adequately discussed without a detailed examination of the forms of the contract, as well as the covenant forms.

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[1] Weiser applies the same term (*Vertrag*) to both covenant and contract. (Artur Weiser, *The Old Testament, Its Formation and Development*, translated by Dorthea M. Barton (New York: Association Press, 1961), p. 53.) Eissfeldt also applies the term *Vertrag* broadly, but divides the Old Testament forms into *Verträge* between tribes and peoples, between God and man, chosen one (king) and the choosing body, and between private parites. (Otto Eissfeldt, *Einleitung in das Alte Testament* (Tübingen: J. C. B. Mohr (Paul Siebeck), 1934), pp. 21-23. The distinctions of Sellin-Rost are perhaps more satisfactory: simple purchase contracts, employment contracts, and contracts which regulate the legal relations between tribes and peoples. (Ernst Sellin & L. Rost, *Einleitung in das Alte Testament* (Heidelberg: Quelle & Meyer, 8th edition, 1950), p. 18.)

Methodological Considerations--The major difficulty which we shall have to overcome in this study is the paucity of Old Testament texts dealing directly with contracts and negotiations. There is very little legislation in the legal codes concerning the transfer and ownership of land or other property. Furthermore, with the possible exceptions of Gen 23, Ru 4, II Sam 24, I Ch 21, and Jer 32, the legal transactions and the sale contract are never reported in complete detail in the Old Testament. However, various forms and procedures are reported in many fragments of negotiations and contracts.

So as we set out to identify and describe the forms of the contract and the institution behind them, we shall have to employ methods which will enable us to discover both the individual forms and the overall pattern of the process without the benefit of a completely reported transaction. We must put the ceremony together from the bits and pieces of the puzzle which are left. We must rely, first of all, quite heavily on the best examples we have of the transaction, the texts named above. While none of these texts is a fully detailed report, we notice that these transactions overlap at several points, that is, they have several forms in common. Then, at the points where these accounts do not overlap, one must raise the question whether or not the remaining elements are also forms of the transaction. If it turns out that they are formal elements, then we have acquired some more forms of the negotiations, perhaps also with their place in the pattern.

The question before us, however, is how one is to determine when he has found a form of the negotiations or contract and when an expression which he has uncovered is sui generis. Irene Lande has given a satisfactory definition of the requisites of a formal expression: "Das Wesen der Formel könnte vielleicht am ehesten dahin definiert werden, dass sie einer häufig vorkommenden Situation den ihr gemässen Ausdruck verleiht, und--zum stehenden Ausdruck wird."[1] One will then need several examples of an expression in order to demonstrate that it is a formula of the legal ceremony. The criteria for formal expressions are almost exclusively stylistic criteria. One may apply the same tests to technical terms. It is not possible to speak of individual terms as formulae of the legal life, but if they are used regularly in similar contexts with some special force in those contexts, then they should be considered technical terms.

When one has identified some of the forms of the transaction on the basis of the most fully reported ceremonies, then he sees that there are a great many other examples of the contract forms in the Old Testament. Many references may contain a single isolated formula from the civil ceremonies.

Another aid which we may employ to remedy the paucity of texts dealing directly with transactions will be the allusions to the contracts and to contract forms. We may thus be able to demonstrate that forms which are attested by only a few examples are formulae. So when we hear in so many places that the court "sits," but hear in only one or two places the specific summons to sit in court, we may conclude that the summons to sit was a formula of the court process. (Cf. below, pp.18 ff.)

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[1] Irene Lande, Formelhafte Wendungen der Umgangssprache im Alten Testaments (Leiden: E. J. Brill, 1949), p. ix.

Another important tool in the identification of the Old Testament legal forms is the vast fund of extra-biblical material, mainly contracts and other economic documents. Since thousands of contracts have been recovered from the Ancient Near East, one could be tempted to simply use these complete texts to fill in the gaps in our reports of the Old Testament transactions. Boecker is quite right, however, in warning that the extra-biblical sources are not to be used in this way.[1] The differences of culture, legal traditions, and institutions prohibit any exact substitution of forms from one situation to the other. Having said this, however, one must hasten to add that there are still very important contributions to be drawn from the extra-biblical texts. The major contribution of these sources to our investigation is that of suggesting what patterns or forms one might expect to find in the Old Testament. The complete extra-biblical contracts suggest what one might expect in a full Israelite contract. With this suggestion, one then returns to the Old Testament to see if such forms and patterns are also attested there. While the extra-biblical texts should never be used as direct evidence for Biblical forms, they are very helpful in suggesting interpretations of the scanty Old Testament evidence.

Some investigation of the extra-biblical sources is absolutely essential if we are to draw any conclusions about the history of the Old Testament legal forms and institutions. And until some of the relationships are drawn, and some of the texts compared, broad generalizations about the value of the extra-biblical sources should be postponed. We shall have to see what contribution these texts can make to our understanding of the Old Testament forms. And we should not lose sight of our aim, which is to understand the Israelite contract forms and institutions.

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[1] Boecker, pp. 21-22.

A few more remarks concerning our outline are in order. Rather than describe every type of Old Testament contract very briefly, we have chosen to discuss in detail the forms of the legal negotiations and the sale contract, and then to draw upon that description in outlining more briefly some of the other important Israelite legal procedures. We have chosen to use the sale contract with its preceding negotiations as the "standard" type not because it is necessarily a more basic or earlier type of contract, but because more of the formulae of the civil process can be difined in relation to the simpler rubrics of the sale agreement. A detailed description of the sale negotiations and contracts will give us a firm basis for comparison in the elucidation of the other forms of the civil ceremonies.

The outline of the work will follow, as far as possible, the pattern of the Israelite transaction. We shall discuss the formulae in the order in which they are used in the process itself. But this is not to suggest that the pattern was always the same, or that any one ceremony employed all of the formulae which we have discovered. Many of the abbreviated accounts of transactions in the Old Testament are shortened by the narrator, but many reflect more brief types of negotiations and contracts. Nor should our outline suggest that Israelite law required the use of a particular set of formulae for any given legal transaction. The formulae which were used were dictated by custom and tradition rather than by the legal codes,[1] and the particular forms in use could change from time to time.

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[1] For this principle applied to the modes of acquisition, cf. David Daube, Studies in Biblical Law (Cambridge: The University Press, 1947), p. 37.

CHAPTER I LEGAL NEGOTIATIONS

1. Polite Greetings

Negotiations for the purchase of real estate or other major property items may begin in several different ways, but one common means is through the normal opening of polite conversation, courteous greetings. In fact, the most common category of salutations used in formal negotiations includes those ceremonious expressions which belong to the realm of polite conversation in general, and have nothing to mark them as special forms of the transaction process.[1] A second category of greeting forms includes salutations which indicate that a formal legal process has begun, but the greetings themselves do not indicate the specific nature of the process, and may in fact be used to preface many different types of legal affairs.[2] In this discussion of polite greetings, we shall not confine ourselves to the forms which begin negotiations, but shall include those polite addresses within the body of the process itself, especially those phrases used by each party to begin his speeches.

In view of the generous use of courteous expression among the Israelites and other Semitic speaking peoples, it is difficult for us to visualize a normal discussion--especially a formal legal discussion--

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[1] Cf. the common appellatives used in polite addresses in Gen 23:6, 11, 15; Gen 47:18; II Sam 24:21, I Ch 21:23. This category is discussed below, pp. 25 ff.

[2] Cf. Ru 4:1, considered below, pp. 18 ff.

beginning without any polite amenities. But many legal and even social gatherings are reported as beginning without polite preliminaries. In many of these cases, the report of the negotiations seems abbreviated, perhaps indicating that the self-evident greetings may have been omitted by the narrator.[1] In some instances, however, the greeting was omitted from the narrative account because it was obviously omitted from the actual process for one reason or another. The disparity in the status of the participants probably accounts for David's failure to greet Araunah (II Sam 24:20ff) and Ahab's failure to greet Naboth (I K 21:1ff).[2]

The presence or absence of polite greetings may be a means for determining whether the negotiations take place before the assembled court or whether the bargaining is private. The contract proper must always be solemnized before the court or witnesses, but it is not necessary for every step of the negotiations to be verified by an official body. However, when Abraham and the Hittites of Hebron address one another with polite formalities (Gen 23), one immediately knows that the legal body is convened. Abraham addresses himself to "the Hittites" (vss. 3, 7), who answer him (vs. 5), and it is clear from the polite gestures and addresses that the patriarch is speaking before the assembled citizens of the land, the court. Such is also the case when

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[1] This seems to be the case in Jer 32:6-8.

[2] Irene Lande suggests that the omission of such formulae from the narratives about conversations is often because the narrator did not consider it necessary to mention the self-evident greeting. But in other places, she says, such an unceremonial address can mean that the speaker is in great agitation. Or it may mean that no polite opening is given because the conversation partners had not just met one another. (Irene Lande, p. 1.)

Boaz actually convenes the legal assembly with his introductory remarks (Ru 4:1,2, cf. below, pp. 18 ff.). Most of our evidence, then indicates that the Israelite negotiations, as well as the contract, are public affairs, conducted before the court.

Irene Lande[1] suggests that the purpose of the Hebrew greeting formulae in general was to convince the person greeted that one had friendly intentions toward him. While we cannot be so certain about the conscious intentions of the Hebrew greetings in general, there does seem to be a conscious if subtle motivation behind the extreme courtesy of the Israelite legal transaction. Each party tries to put the other in his debt through elaborate courtesy and flattery, and thereby make the most of the transaction.

The line between firmly stamped formal elements and mere devices--always difficult to distinguish--is almost indiscernable in the expressions of courtesy. We must always ask ourselves whether a particular phrase belongs to the style of the transaction or to the style of a particular writer, whether it is a common expression of the legal life or a sui generis expression devised by an individual writer. Gen 23, for example, seems to exhibit exaggerated politeness and elaborate courtesy, a characteristic which one might attribute to the style of the Priestly writer. But most commentators are agreed that the style is the result of the writer's accurate reproduction of the forms of polite address, rather than the creative hand of an inventive author. Thus this particular text probably reflects a more accurate picture of the way the ceremony of land transfer took place, simply because the

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[1] Ibid., p. 1.

Priestly writer is so predisposed to detailed accuracy in legal affairs. The chapter gives us a normal picture of oriental conversation and bargaining.[1]

a. Legal Summons--One opening formula which seems to belong specifically to legal affairs is the phrase סוּרָה שְׁבָה־פֹּה , "Turn aside, sit down here" (Ru 4:1). This expression is to be interpreted as a formal invitation to sit in council, a summons, though not a summons in the modern legal understanding of the term. The expression does not constitute a court order, but is a stronger call than an informal invitation. The first element of the phrase, סוּרָה , is the qal imperative, masc. sing., with the הָ ending. As far as can be determined, this lengthened form of the imperative retains no special connotation in the invitation formula.[2] The imperative of סוּר is a typical means of expressing an invitation or summons, usually occurring in connection with another invitation formula. The lengthened imperative is found again in Ju 4:18: "Turn aside, my lord, turn aside to me; have no fear." (סוּרָה אֲדֹנִי סוּרָה אֵלַי אַל־תִּירָא) The plural imperative is used in Gen 19:2: "My lords, turn aside, I pray you, to your servant's house and spend the night." (הִנֶּה נָּא־אֲדֹנַי סוּרוּ נָא...וְלִינוּ)[1]

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[1] Gunkel observed: "The formalities of the whole transaction are oriental--they had more time than we--and are not unusual, but totally natural. To this comes once again the pleasure of this priest-jurist, who here on his own sphere can once more let himself go." (Hermann Gunkel, Genesis, p. 243.) Von Rad also notes: "The negotiation, which was legal rather than commercial in character, moves within the framework of worldly politeness. It is a delightful miniature of adroit Oriental conversation!" (Gerhard von Rad, Genesis, translated by John Marks (Philadelphia: Westminister Press, 1961), p. 242.) A. G. Barrois points out that Gen 23 abounds in the technical terms of the contract, the redactor taking great pains to show that Abraham had a legal title for possession of Canaanite soil. (A. G. Barrois, Manuel D'Archaeologie Biblique, vol II (Paris: Editions A. Et J. Picard Et Cie., 1953), p.208.)

[2] Blake assumes that this lengthened form of the imperative was "probably originally emphatic." (F. R. Blake, A Resurvey of Hebrew Tenses (Rome: Pontificium institum biblicum, 1951), p. 14.)

But the important and distinctive element of the phrase for legal ceremonies is שְׁבָה־פֹּה , "Sit down here." This second imperative is set in a co-ordinate, asyndetic relationship to the first imperative in Ru 4:1, and used alone in Ru 4:2. The adverbial element פֹּה is also used with the imperative of ישׁב in Gen 22:5. It occurs again in invitations in Nu 22:8 and Ju 19:9b, in both cases with the imperative of לִין .

It has been shown (see Introduction) that the Hebrew ceremonies for the sale or transfer of major property items are best characterized as "legal negotiations," that is, they occur before the "court," usually in the city gate, the spot where trials are held and "civil" suits are decided. Since the legal negotiations are affairs of the court, some of the forms of the court process occur in these negotiations. One of these forms appears to be the summons to "sit" in court. But the specific summons of Ru 4:1,2 occurs only in this particular ceremony. Is there evidence elsewhere that the summons to sit in court is a formal summons, or must the summons of Ru 4:1,2 be regarded as a sui generis expression?

It does appear that our first impression that שְׁבָה is a formal summons to court is correct when we discover that the expressions "sitting in judgment" or "the court sits" are proper idiom in Hebrew as in

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[1] For other forms of the invitation in general conversational usage, see Lande, pp. 43-45.

English. The court is thought of as sitting in judgment, in the first place, in criminal trials. The trial of Jeremiah began when the princes of Judah heard the accusations and came up from the king's house "to the house of the Lord and took their seat in the entry of the New Gate of the house of the Lord." (Jer 26:10) There is also a series of texts in Daniel which speak of the court sitting in judgment (7:10,26), or of the Ancient of Days taking his seat, obviously for judgment (7:9). Isaiah looks forward to the day when the Lord will be "a spirit of justice to him who sits in judgment." (28:6) Other texts speak of the seat in the gate as a place of honor (Pr 31:23; Job 29:7; Est 5:13.[1] The accusation is raised against the wicked in Psalm 50:20:

> "You sit and speak against your brother;
> you slander your own mother's son."

The Psalmist is probably referring to the giving of false testimony or the raising of false accusations in the court.[2]

More directly related to the use of שְׁבָה as an invitation to sit in council are those texts which speak of parties in a civil suit or process sitting, usually in the gate. Jeremiah hands his deed of purchase over to Baruch in the presence of Hanamel, the witnesses who signed the deed, "and in the presence of all the Jews who were sitting in the court of the guard." (Jer 32:12) Especially relevant is the fact that the legal parties in the transaction of Gen 23 sit to listen and then to speak. That Abraham "rose and bowed to the Hittites" (וַיָּקָם vs. 7) indicates that he had taken his seat after his initial proposal.[1] In vs. 10 it is noted that Ephron "was sitting" (יֹשֵׁב) among the Hittites. This noun clause which begins the verse, attached to a verbal clause by a waw, is a circumstantial clause, indicating a state contemporaneous with the principal action:[2] "(All this time) Ephron was sitting among the Hittites." Since this idiom of sitting in court is so widespread in the Old Testament legal affairs of all sorts, our decision to consider שְׁבָה a formal summons to sit in court seems more than justified, in spite of the paucity of examples of the specifically formulated summons.

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[1] Cf. also M. J. Dahood, "Northwest Semitic Philology and Job," in The Bible and Current Catholic Thought, edited by J. L. McKenzie, (New York: Herder and Herder, 1962), p. 68.

[2] There are also indications that in the period of the Hebrew monarchy the king sat in judgment--often in the gate--both in civil and criminal proceedings, cf. II Sam 18:24, 19:8; Pr 20:8; Jer 38:7. Likewise, Moses sits to judge the people, Ex 18:14.

The idiom of sitting in the gate in reference to sitting to judge was current in Ugaritic literature as in the Old Testament. In fact, the invitation to sit occurs at least once, though it is not to be construed as a summons to sit in council:

ṯb . bny . lmṯb[t]km	Sit, my sons, on your seats,
lkḥṯ . zblk[m a]nk	on the thrones of your princeship.
(KRT C, v,24-5)	

But more directly related to the use of ישׁב in the technical terminology of the court is a text in 2 AQHT, col v:

bymm . apnk . dnil . mt	Straightway Daniel the Rapha-man,
5 rpi . a‹p›hn . ǵzr . mt . hrnm[y]	Forthwith Ghazir the Harnam[iyy]-man,
ytšu . yṯb . bap ṯǵr . tḥt	Is upright, sitting before the gate,
adrm . dbgrn . ydn	Beneath a mighty tree on the threshing floor,
dn . almnt . yṯpṭ . ṯpṭ . ytm	Judging the cause of the widow,
	Adjudicating the case of the fatherless.[3]

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[1] Gunkel, Genesis, p. 243.

[2] GKC, p. 451.

The same lines are found in fragmentary form again in 1 AQHT, col i, 20ff.[1] Here, as in the Old Testament texts, is the direct connection of sitting in the gate with the administration of justice, though there is the obvious difference in the Ugaritic emphasis on the authority of the official judge or even the authority of the king for administering justice, seen especially in KRT C, col vi (text 127), lines 30ff. Yassib is accusing his father Keret of not "judging the cause of the widow," whereupon he insists that Keret come down from his throne and let Yassib sit:

37	rd . lmlk . amlk	Descend from the kingship--I'll reign;
	ldrktk . aṯbnn	From thine authority--I'll sit enthroned.[2]

Another formal expression which is used in the negotiations between Abraham and the Hittites is שְׁמָעֵנִי, "listen to me" or "hear me," and the variations שְׁמָעֵנוּ and שְׁמָעֵנִי : "Hear us, my lord; you are a mighty prince among us." (Gen 23:6a, cf. also vss. 8,11,13,15) One asks immediately whether or not this expression is a terminus technicus of the legal transaction whereby the speaker formally takes the floor. Lande argues that the request for a hearing (Aufforderung zum Zuhören), especially שׁמעו־נא and other expressions with the imperative of שׁמע , is a formal expression of the conversation. That this request is formalized is seen by the fact that the phrase is found in the song (Gen 4:23), in the wisdom poetry (Pr 4:1; 8:6, etc.), as well as in the

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[3] (from preceding page) Ginsberg's translation in ANET, p. 151. Except where noted, the Ugaritic texts which we use have been from Gordon's edition in UM.

[1] Compare also Job 29:7.

[2] Ginsberg, ANET, p. 49.

prophets (Is 1:10-13; Jer 7:2; 10:1; Ez 13:2, etc.)."[1] Noting Gen 23:6 and 11 in particular, she concludes that the "listen to me" is not used to make an actual distinction of rank between the speaker and the listener, but that the phrase is "eine Fiktion aus Höflichkeitsgründen." Above all, the "listen to me" stands in the midst of a conversation, before an important bid or request.[2]

Lande's arguments have shown that the imperative of שמע with one of several possible additions (לוּ, נָא)[3] is a formal expression of the Hebrew dialogue, but this does not demonstrate that שמע is a terminus technicus of the legal negotiation. On the other hand, the widespread use of שמע in everyday conversations and dialogues of every sort argues against its classification with the technical terminology of legal practice. The phrase is used where one wishes to make a polite counter-suggestion or offer, and hence lends itself to use in bargaining. The term then is used with the transaction because it belongs to the style of the exhortation, to the polite pleading of the civil court, and therefore to the polite negotiations for sale.[4]

One of the most common opening addresses in the Ugaritic myths is the imperative of *smʿ*, corresponding to the formula under discussion.[1] But the imperative of šmʿ is also used in formulations similar to the ones we have seen in the Old Testament negotiations, where the verb opens a polite request or entreaty, and may be argumentative, especially where one wishes to offer a better suggestion or urge a plan. Especially relevant is a text in 2 AQHT, col vi, where the formula is the opening of a negotiation, or at least precedes a Purchase Request, and an attempt to buy something, in this case Aqhat's bow. Anath is speaking:

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[1] Lande, p. 14.

[2] *Ibid.*, p. 54.

[3] The particle לוּ in Gen 23:6,13, and 14 is to be understood as the optative particle, which is often followed by the imperative, indicating--as here--exhortation. Cf. *GKC*, p. 110, C. Brockelmann, *Hebräische Syntax* (Verlag der Buchhandlung des Erziehungsvereins Neukirchen, Kreis Moers, 1956), p. 2.

[4] For the use of the phrase in court procedures, cf. Job 15:8; 37:14; and Pr 8:34.

[She lifts up her voice] and cries:	16	tšu gh wtṣḥ . šmʿ . mʿ
'Listen, I pray, [O Aqhat the Youth.	17	laqht ǵzr i]rš ksp .
A]sk for silver, and I'll give (it) to you;		watn! k
[For gold, and I'll se]nd (it) to you;		ḥrṣ wašlhk . wtn . qšt[k]
Only give your bow [to me;]		[ly tq]ḥ[q]ṣ! ʿtk . ybmt . limm

Also relevant in this connection is the discussion between Baal and Kothar wa-Khasis concerning whether or not the craftsman god will put a window in Baal's house:

Then replied Kothar wa-Khasis:	120	wyʿn . kṯr . wḫss
'Listen, O Puissant Baal,		šmʿ . laliyn bʿl
Know this, O rider of the Clouds.		bn . lrkb . ʿrpt
A window I'll make in the house,		bl . ašt . urbt . bbh[tm]
A casement within the palace.'		ḫln . bqrb . hklm

(II AB (text 51), col v, lines 120-24)

The formula is repeated with variation in the following column. The same discussion is in process:

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[1] Several of the passages where the term occurs are to be dismissed from this consideration, for the address is used to preface a command rather than a polite request. Typical is KRT C (text 127):

15 Then Keret the Noble commands,
Lifting his voice and crying:
'Listen, O Lady Hurriya. (šmʿ . lmṯt ḫry)
Prepare a lamb that I may eat,'

Similar uses of the formula are found in I AQHT, col ii, lines 50ff, cf. Ginsberg's translation in ANET, AQHT C, col ii, lines 50ff, p. 153.

A second time Ko[thar wa]-Khasis said:	ṯn . rgm k[tr w]ḫss
'Listen, pray, Pu[is]sant Baal.	4 šmʿ . mʿ . la[li]yn bʿl
A wind[ow] I'll make in the house,	bl . ašt . ur[bt] . bbhtm
A casement withi[n the pa]lace.'	ḫln . bqrb[hk]lm

(II AB (text 51), col vi, lines 3-6)

So we see that many times the imperative of šmʿ occurs in the Ugaritic myths and legends as a preface to a polite suggestion, request, or entreaty. Other examples of this usage are found where Anath is suggesting something to Aqhat, probably a good place to hunt[1] (3 AQHT, col i, lines 22ff.), where Yatpan is trying to dissuade Anath from killing Aqhat for his bow and darts (3 AQHT, col iv, lines 11ff.), where Shapsh encourages Mot to cease fighting with Baal (I AB (text 49), col vi, lines 22-24), and where Yassib tries to convince his father Keret to come down from the throne and let Yassib reign (KRT C (text 127), col vi, lines 30ff.).

The imperative smʿ is rarely the complete formula, but, as in the Hebrew texts, is usually completed by various enclitic particles. The particle mʿ is used in II AB, vi, 4, and also in I AB, vi, 23; KRT C (text 127), vi, 41; 3 AQHT, i, 23, and 2 AQHT vi, 16, each time in the precative sense, corresponding in meaning to the Hebrew נָא and לך . Most of these formulae include the most common Ugaritic vocative particle l, "Oh," following the imperative.[2]

b. Ordinary Greetings Used in Negotiations--Most of the other forms of polite address and greeting used in the negotiations are to be understood simply as elements common to any polite intercourse. Such are above all the titles with which the parties to the negotiations address one another. Common is the use of אֲדֹנִי, "My lord," to honor the other party and to express one's own humility. For the use of this common appellative in negotiations for purchase see Gen 23:6,11,15 (each time to Abraham); Gen 47:18; II Sam 24:21,22; and I Ch 21:23.[1] The term may be used by peers to honor one another (as the Hittites to Abraham), or by inferiors to honor their superiors (as Araunah to David).[2]

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[1] Cf. Ginsberg, ANET, p. 152, for this interpretation of the damaged text which follows the formula of entreaty.

[2] Gordon, UH, parag. 12.6, p. 93. Cf. II AB iv-v, 121; II AB vi, 4; I AB vi, 24, etc.

Negotiations may begin with questions, as in II Sam 24:21: "Why has my lord the king come to his servant?" (מַדּוּעַ בָּא אֲדֹנִי)[3] Another type of polite expression common in conversation and used in the negotiation is the self-identification, such as עַבְדּוֹ "his servant"

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[1] On the more general use of אֲדֹנִי as an address, cf. Lande, Formelhafte Wendungen, pp. 23-32.

[2] Two other appellatives used in the negotiations deserve mention. The first of these, נְשִׂיא אֱלֹהִים "mighty prince," occurs only in Gen 23:6, and should not be taken as a formal appellative. The phrase, which uses the title of God to express the superlative, belongs simply to the urbane politeness of this transaction. (cf. Gunkel, Genesis, p. 243, von Rad, Genesis, p. 243.) Cf. also D. Winton Thomas, "A Consideration of some Unusual Ways of Expressing the Superlative in Hebrew," VT,III (1953), pp. 209-224. For a different interpretation of this expression, cf. M. H. Gottstein, VT,III (1953), pp. 298ff. The other phrase is פְּלֹנִי אַלְמֹנִי, "such a one" or "friend" (Ru 4:1). The phrase is the equivalent of our "so-and-so" or "what's-his-name," best explained by Cooke as "a form of address indicating a definite person without expressly naming him...." (G. A. Cooke, The Book of Ruth (Cambridge: Cambridge University Press, 1913), p. 13) The omission of the name of the גֹאל belongs to the work of the writer rather than to the speech of Boäz (cf. Paul Joüon, Ruth, Commentaire Philologique et Exégétique (Rome: Institut Biblique Pontifical, 1953), p. 80), for Boaz would doubtless know the name of his near relative and would not address a relative in such a general manner. The phrase, then, is not even a speech form and cannot belong to the formulae of greeting or address.

[3] This question corresponds to the questions which begin many conversations in the Old Testament, cf. Lande, pp. 39-43.

(II Sam 24:21), and גֵּר־וְתוֹשָׁב אָנֹכִי עִמָּכֶם "I am a stranger and a sojourner among you" (Gen 23:4).[1] It is also said that Moses sent "words of peace" (דִּבְרֵי שָׁלוֹם) to Sihon as a preface to his request to buy food and water (Dt 2:26). The phrase is an allusion to the polite greetings which were used in these negotiations.

2. The Purchase Request

The existence of the Purchase Request as a formula of the legal process has already been noted by Hans Jochen Boecker;[2] it remains for us, however, to describe the formula more fully as well as to show its place in the legal negotiations. The place of the Purchase Request in the legal negotiations is at the beginning of the negotiations proper; the one who makes the Purchase Request institutes the legal process, if it has not already been instituted by a summons from one of the parties. As has been noted many times,[3] the transfer of property is by no means a private matter, but must be conducted before the legally responsible citizens of the community. One cannot always be certain, however, that the Purchase Request calls the court to order--Jer 32, for example, is ambiguous at this point. But there can be no doubt that the Purchase Request opens the *negotiations*.

Boecker insists that the process described in Gen 23 proceeded between the two interested parties alone up to the naming of the price by Ephron, and that the settling of the issue of Ru 4 is between the two parties until the final stages of the negotiation.[1] But it seems clear that in Gen 23 Abraham's initial Purchase Request had called the court into session. In this case the court participates in the process from the very beginning, even being called upon as a third party to intercede with Ephron on behalf of Abraham. While the location of the process is not named until vs. 10, it is apparently taken for granted that the court was assembled in the gate of the city,[2] for the negotiation is one continuous process here, with no suggestion of a change in the location of the process. The legal process in Ru 4:1 ff. clearly involves the full court from the very beginning, the elders being called even before the Purchase Request is made. But while the Purchase Request may call the court into session, this formula need not do so, for in some cases the court is already in session and in others the court does not participate until the preliminary negotiations have been concluded and the sale agreed upon, if it participates at all (cf. II Sam 18 ff., I K 21:1 ff., I Ch 21:18 ff.).

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[1] Cf. Lande, pp. 68-78.

[2] Boecker, pp. 172ff. Boecker's term for the formula is *Kaufaufforderung*.

[3] Boecker, p. 168; Köhler, *Hebrew Man*, pp. 141-2.

a. The Purchase Request Addressed to the Owner--When the Purchase Request arises from the side of the buyer, it may either be addressed directly to the owner of the property, or addressed to the owner through a third party. Typical of the Purchase Request addressed directly to the owner is I Ch 21:22: "And David said to Ornan, 'Give me (תְּנָה־לִּי) the site of the threshing floor that I may build on it an altar to the Lord--give it to me (תְּנֵהוּ־לִי) at its full price--that the plague may be averted from the people." In this elementary form of the Purchase Request the buyer speaks, using the qal imperative of נתן followed by ל and the first person singular pronominal suffix. This indirect or second object, לִי , is followed by the direct object giving the property desired, in this case "the site of the threshing floor." Other examples of this formulation of the Purchase Request are found in Gen 23:4; I K 21:2,6; and Dt 2:28. In I Ch 21:22a and I K 21:2,6 the singular imperative is the lengthened form. In all of the cases mentioned, the formulation is to be understood: "sell me."

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[1] Boecker, pp. 168-9.

[2] von Rad, Genesis, p. 242. But the presence of the court and its participation in the process does not justify von Rad's suggestion that the consent of the entire population may have been necessary for the transfer of the land. There is no evidence for such communal consent either in Gen 23 or elsewhere in the Old Testament.

When the buyer does not address the owner directly, the Purchase Request is formulated with the qal imperfect of נתן , usually followed, as the direct request, by the direct and the indirect objects. These imperfects are to be taken as jussive: "that he may give." Indirect Purchase Requests of the owner are found in Gen 23:9a,b; and Neh 2:8. Abraham asks the Hittites to "entreat" (פגע) for him Ephron "that he may give me (וְיִתֶּן־לִי) the cave of Machpelah, which he owns; it is at the end of his field. For the full price let him give it to me (יִתְּנֶנָּה לִּי) in your presence as a possession for a burying place." (Gen 23:9) The practice of having a third party persuade the owner to sell was also current in Babylonian legal transactions.[1]

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[1] Johns, Babylonian and Assyrian Laws, Contracts, and Letters, p.227.

So the first element of the Purchase Request to the owner is a form of the verb נתן --usually imperative when the owner is addressed directly and jussive when addressed through a third party--followed by the so-called indirect object, לִי , and the direct object. The formula is almost invariably completed by one or more secondary clauses, in every case giving the reason or reasons why the purchase is requested. Abraham says: "Give me property among you for a burying place, that I may bury (וְאֶקְבְּרָה) my dead out of my sight." (Gen 23:4) The secondary clause completing this sentence is a purpose clause, indicated by the use of the qal imperfect first person and the waw conjunctive, or "weak" waw.[1] This formulation of the purpose clause is repeated in Gen 23:13. The full form of the Purchase Request in I K 21:2 exhibits the completion of the formula by use of a purpose clause, also formed with the imperfect and the waw conjunctive: "Give me your vineyard, that I may have it for a vegetable garden...." (וִיהִי־לִי לְגַן־יָרָק) But this particular request includes yet another qualifying clause, "because it is near my house...," in this case a causal clause formed with כִּי. David's request to purchase the threshing floor of Ornan (I Ch 21:22) is completed by a secondary clause giving the reason for his request: "That I may build on it (וְאֶבְנֶה־בּוֹ) an altar to the Lord...." Here again the purpose clause is formed with the waw conjunctive and the imperfect. The same reason for the request is given in II Sam 24:21, but with a different formulation: "in order to build (לִבְנוֹת) an altar to the Lord...." The purpose clause in this case is formed with the qal infinitive construct and the prefix.[1] The infinitive construct and the prefixed ל is used also to express purpose in Gen 23:8 as a parallel to the fuller purpose clause in Gen 23:4, noted above.

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[1] Theophile J. Meek, "Result and Purpose Clauses in Hebrew," JQR, XLVI (July, 1955), pp. 40-43.

The mood of the Purchase Request is imperative, but the formula is a request, not a command. Only once is the second person imperfect used as a command to sell (Dt 2:28), and the petition is unsuccessful. The rule is to retain the polite nature of the ceremony, a custom which even Ahab with all his determination to buy the property of Naboth does not violate.

Very similar formulations of the Purchase Request of the owner occur in the Ugaritic texts, constructed with the imperative of נתן (Ugaritic ytn). Anath is trying to buy Aqhat's bow:

> A]sk for silver, and I'll give (it) to you;
> [For gold, and I'll se]nd (it) to you;
> Only give your bow [to me;]
> (2 AQHT, vi)

> 17 [laqht ǵzr i]rš ksp
> . watn!k
> [ḫrṣ waš]lḫk . wtn
> . qšt[k]
> [ly tq]ḥ[q]ṣ!ʿtk
> . ybmt . limm[2]

The verb נתן in the context of the Hebrew Purchase Request is surely to be translated "to sell," since the formulations refer to buying and selling.[3] And many other Old Testament texts besides the Purchase Requests show that נתן may connote "to sell."

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[1] Cf. GKC, pp. 348 ff. on the use of the infinitive construct to indicate purpose.

[2] But note that Albright interprets wašlḫk in 2 AQHT, vi, lines 25-33, and presumably here as the causative of lḫḫ, "and I will give thee life-force." ("The 'Natural Force' of Moses in the Light of Ugaritic," BASOR, 94 (April 1944), pp. 32-35.) Our interpretation, however, follows Ginsberg (ANET), and G. R. Driver, Canaanite Myths and Legends (Edinburgh: T. & T. Clark, 1956), pp. 54-55.

[3] Loren Fisher observes that נתן in Gen 23 is a technical term meaning "to sell." (Abraham and His Priest-King," JBL, LXXXI (1962), p. 264.

These texts include first of all those usages of נתן in connection with money (usually כסף) or other remuneration, meaning "to sell." The clear parallelism of Dt 2:28 shows this connotation: "You shall sell me food for money (אֹכֶל בַּכֶּסֶף תַּשְׁבִּרֵנִי), that I may eat, and give me water for money (וּמַיִם בַּכֶּסֶף תִּתֶּן לִי), that I may drink; only let me pass through on foot...." (Cf. also Ju 2:14; Lev 25:37; Joel 4:3 (Eng. 3:3).) But much more numerous are the texts where נתן is used in connection with money, meaning "to pay." Typical is Ju 16:5c: "and we will each give you--i.e. "pay you"--(נִתֵּן לָךְ) eleven hundred pieces of silver." This use is common in the laws: "If an ox gores a slave, male or female, the owner shall give (יִתֵּן) to their master thirty shekels of silver, and the ox shall be stoned." (Ex 21:32; see also Ex 21:19; 22:6,9)[1]

This ambiguity of the verb נתן which usually means "to give" but at times may mean "to sell" or "to pay" may result in confusion in the identification of Purchase Requests. Often it is difficult to distinguish Purchase Requests from simple requests for gifts. In Jos 15:19 the formula represents a request for a gift: "She said to him, 'Give me a present (תְּנָה־לִּי בְרָכָה); since you have set me in the land of the Negeb, give me (וְנָתַתָּה לִי) also springs of water.' And Caleb gave her the upper springs and the lower springs." The parallel text in Ju 1:15 has a significant variation: "She said to him, 'Give me a present (הָבָה־לִּי בְרָכָה); since you have set me in the land of the

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[1] Among the numerous other texts where this usage is found are the following: Gen 38:16; Dt 14:26; Ps 49:8 (Eng 9); Jonah 1:3; Jer 22:13; Is 61:8.

Negeb, give me (וְנָתַתָּה לִי) also springs of water.'" But it is not so simple to determine whether Gen 30:14b contains a Purchase Request or a gift request: "Then Rachel said to Leah, 'Give me, I pray (תְּנִי־ נָא לִי), some of your son's mandrakes.'" The formulation is the same as the standard Purchase Request except for the introduction of נָא between the imperative and the indirect object. However, since the context reveals that Rachel "pays" Leah for the mandrakes, this particular phrase should be taken as a Purchase Request.

There are two important exceptions to the usual pattern of the Purchase Request, the first being the transaction of Gen 25:29-34, Esau's sale of his birthright to Jacob. Esau asks for some pottage and Jacob replies: "Sell me this day your birthright." (מִכְרָה כַיּוֹם אֶת־בְּכֹרָתְךָ לִי) The pattern is the same as we have seen, the imperative and the direct object of the item requested and the indirect object formed with ל and the first person pronominal suffix, but instead of נתן the verb is מכר. No secondary clause noting the reason for the request is given. We can only note this exception to the rule and observe that the pattern is that of the usual Purchase Request but the verb is different. For examples of other forms of מכר used in similar connections, see Ru 4:3 and Lev 25:25.

The other exception is found in II Sam 24:21, where the request is expressed by the infinitive construct of קנה : "To buy (לִקְנוֹת) the threshing floor of you...." This unusual form of the request is brought about by the fact that it is an answer to a question, rather than an outright request at the beginning of negotiations. However, the verb קנה is not strange to the Purchase Request, only to the request of the seller, as we shall see in the discussion of the request addressed to the buyer. Furthermore, the version of the same sale in I Ch 21 reflects a fuller and more accurate picture of the bargaining procedure, probably because the Chronicler--like the Priestly Writer--had such a predilection for legal exactness, especially when the legal affair involved a matter so important to him as David's purchase of the site of the temple.

b. The Purchase Request Addressed to the Buyer--Just as a buyer may open legal negotiations by issuing a Purchase Request, so a property owner or other interested party may open negotiations by asking a prospective buyer to purchase property. The Purchase Request to the buyer is very similar in structure to the Request to the owner, the most obvious difference being in the verb used in the formula. When the request arises from the side of the owner, the verb used is קנה , "to buy." Three examples of this form of the Purchase Request are found in Jer 32:7-8: "Behold, Hanamel the son of Shallum your uncle will come to you and say, 'Buy (קְנֵה לְךָ) my field which is at Anathoth, for the right of redemption by purchase is yours.' 8 Then Hanamel my cousin came to me in the court of the guard, in accordance with the word of the Lord, and said to me, 'Buy (קְנֵה נָא) my field which is at Anathoth in the land of Benjamin, for the right of redemption is yours; buy it for yourself (קְנֵה־לָךְ).' Then I knew that this was the word of the Lord." In this case, as in Gen 47:19, the seller addresses himself directly to the buyer, using the imperative of the verb קנה ,

followed by the direct object specifying the property offered for sale. In all twelve examples of the Purchase Request of the buyer, the Request is formulated with the qal imperative, masc. sing. of the verb קנה .[1] The mood of this type of Purchase Request, as the mood of the Request of the owner, is the polite entreaty, not a demand.

Most of the Purchase Requests of this type include direct objects (Gen 47:19; Jer 32:7,8a,25; Prov 4:5,7; 23:23), but in some the formula is abbreviated, omitting the direct object (Ru 4:4,8; Jer 32:8b). Likewise, some of the formulations include the indirect object לְךָ (Jer 32:7,25), or לָךְ (Ru 4:8; Jer 32:8).

As in the Purchase Request to the owner, the Requests to the buyer may be completed with one or more secondary clauses, always giving the reason or reasons for the request. Usually one sells his land because he is forced to do so by poverty. The most extreme cases of need may force a man to sell himself into slavery as well as selling his land, as revealed in the qualifying clause to the Purchase Request in Gen 47:19: "Buy us and our land for food....that we may live (וְנִחְיֶה אֲנַחְנוּ) and not die...." That the secondary clause is a purpose clause is seen by the use of the waw conjunctive and the imperfect.[2]

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[1] The twelve examples of this type of Purchase Request are: Gen 47:19; Ru 4:4,8; Jer 32:7,8(2),25; Prov 4:5(2),7(2); 23:23. In Jer 13:1, 19:1, and Ezr 7:17 (Aramaic), the second pers. masc sing. of this same verb is used in what must be taken as commands to purchase, e.g.: "Thus said the Lord, 'Go, buy (וְקָנִיתָ) a potter's earthen flask, and take some of the elders of the people....'" (Jer 19:1) Though a "buyer" is addressed, these phrases are not to be taken as forms of the Purchase Request. None of them are parts of transactions or negotiations.

[2] Meek, JQR, XLVI, pp. 40-43.

We also see from this text that the offer of oneself for slavery is made with the same Purchase Request as the offer of land for sale. In Dt 28:68 one of the curses of disobedience is that "you shall offer yourselves for sale (הִתְמַכַּרְתֶּם) to your enemies as male and female slaves, but no man will buy you (קֹנֶה)."[1]

More commonly, the secondary clauses in these Purchase Requests show the close relationship between the transfer of land and the laws concerning the "redemption" of land by the גֹּאֵל , the "next-of-kin." In these cases also, poverty may be the motivation for the sale. The connection between the sale and the laws of "redemption" is seen in Jer 34:7,8: "Buy my field which is at Anathoth, for (כִּי) the right of redemption by purchase (מִשְׁפַּט הַגְּאֻלָּה לִקְנוֹת) is yours." There is a slight variation in vs 8: "for (כִּי) the right of possession and redemption (מִשְׁפַּט הַיְרֻשָּׁה וּלְךָ הַגְּאֻלָּה) is yours...." Both clauses are causal. While no secondary clauses accompany the Purchase Requests in Ru 4, this entire transaction is also closely related to the customs of the גֹּאֵל . It is strongly implied that the request is made of the particular buyer precisely because he is the גֹּאֵל , or is to act as the גֹּאֵל . In fact, the Purchase Request and the call to perform the duty of the גֹּאֵל are set in parallel: "So I thought I would tell you of it, and say, 'Buy it (קְנֵה) in the presence of those sitting here, and in the presence of the elders of my people. If you will redeem it (תִּגְאַל), redeem it; but if you will not, tell me, that I may know, for there is no one besides you to redeem it, and I come after you.' And he said, 'I will redeem it.'" (Ru 4:4)[1]

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[1] Cf. Gen 39:1; Ex 21:2; Lev 22:11; and Ec 2:7 for the use of the verb קנה in reference to the buying of slaves.

This connection between the sale of land and the *goʾel* laws must be explained in terms of two distinct but related schools of thought concerning land in the Old Testament. The first holds that the land must not be transferred outside of the tribe, that when land is sold, it must be bought by the nearest relative who is willing to buy it. It is in keeping with this purpose that Nu 36 makes provision for ownership of land by the daughters of Zelophehad, and by implication all Israelite women. The law stipulates that the daughters of Zelophehad are to have the inheritance of their father, but they are to marry within their own tribe: "So no inheritance shall be transferred from one tribe to another; for each of the tribes of the people of Israel shall cleave to its own inheritance." (Nu 36:9) The law that is being observed in Jer 32 and Ru 4 is the injunction that property must follow the line of kindred.[2]

But there is in the Old Testament another school of thought which insists that the land ought not to be sold at all. Yahweh commands: "The land shall not be sold in perpetuity, for the land is mine; for you are strangers and sojourners with me. 24 And in all the country you possess, you shall grant a redemption of the land." (Lev 25:23-4) But this school of thought is not entirely inconsistent with the laws which would keep the land within the tribe.[1] According to Lev 25, when a man is forced to "sell" his land to someone outside of his family, he is actually only leasing[2] his inheritance until it can be brought back--"redeemed"-- into the family. The land may be "redeemed" either by the owner himself or by his next-of-kin, his go'el. (Lev 25:25-27) Or, if the land cannot be bought back, the outsider may keep it until the year of the jubilee, at which time the land reverts back to the original owner. (Lev 25:28)

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[1] On the use of גאל as a terminus technicus of the legal language, cf. J. J. Stamm, *Erlösen und Vergeben im Alten Testament* (Bern: A. Francke, 1940), pp. 27 ff.

[2] Pedersen, *Israel*, Vol. I, pp. 83-4.

The transaction of Jer 32 describes the transfer of land within a family, whereby one member apparently is forced to give up his inheritance--we are not told what need prompts the sale. In this case the owner himself, Hanamel, offers the land to his cousin, apparently before the property is offered for public sale. The situation is not so simple in Ru 4. In the first place, the Purchase Request is not made by the owner of the land, but by Boaz in vs. 4 and the גֹאֵל in vs. 8. The Requests are made by third parties acting on behalf of Naomi, the owner of the "piece of land." The simplest explanation of the Purchase Request here is that, as we have seen, the land is to follow the lines of kinship, and the option to buy must be offered in order of family relationship to the owner of the land.[1]

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[1] Probably many original inconsistencies have been smoothed over by the intentional harmonization of these two strains. (cf. also F. Horst, "Das Eigentum nach dem Alten Testament," in Gottes Recht (München: Chr. Kaiser Verlag, 1961), pp. 203 ff., and G. von Rad, "Verheissenes Land und Jahwehs Land im Hexateuch," in Gesammelte Studien zum Alten Testament (München: Chr. Kaiser Verlag, 1958), pp. 87-100, especially pp. 92 ff. Cf. also K. H. Henery, "Land Tenure in the Old Testament," PEQ 86 (1954), pp. 5-15.

[2] Cf. also Pedersen, Israel, Vol. I, II, p. 87.

There are other Purchase Requests to the buyer which are not explicitly formulated by the owner of the property. In Jer 32:25 it is God who has said to Jeremiah: "Buy (קְנֵה־לְךָ) the field for money and get witnesses," though the actual Request was also explicitly stated by Hanamel, the owner of the property. The invitations to "buy" wisdom (חָכְמָה), truth (אֱמֶת), and insight (בִּינָה) (Prov 4:5-7; 23:23) are general injunctions in the form of the Purchase Request of the buyer.

We should have little doubt by this time that קנה is a terminus technicus of the Israelite legal transaction,[2] since it is used in all of the Purchase Requests to the buyer thus far discussed. In addition to the use of the imperative in the Purchase Request, we may point to the numerous texts where other verbal formations of this root are used to describe a sale. The verb refers to the purchase of land (Neh 5:16; I K 16:24; Gen 25:10; 33:19; 49:30,32; 50:13; Jos 24:32, etc.), the sale of slaves (Gen 39:1; Ex 21:2; Lev 22:11; Ec 2:7; Neh 5:8), and the sale of movable property (II Sam 12:2; II K 12:13; 22:6; Is 43:24, etc.). Many of these texts speak of buying (קנה) for money, either בכסף "for/with silver" (Is 43:24; Gen 17:12,13; Lev 22:11), for a given amount of silver (I K 16:24), or "for a hundred קְשִׂיטָה "

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[1] But many problems remain concerning this chapter, not the least of which is the question of where and how Naomi acquired the piece of land, since the OT makes no provisions for widows to inherit from their husbands. It may be that our simplest solution is not the most accurate.

[2] We are of course referring to the verb קנה which means "to sell," and not the verb קנה which means "to create." Cf. P. Humbert, "Qāna en hébreu biblique," in Opuscules d'un Hebraïsant (Neuchatel: Secrétariat de l'université, 1958), pp. 167-174.

(Gen 33:19; Jos 24:32).

The invitation to purchase found in Is 55:1 should be noted in connection with the Purchase Request of the buyer:

> Ho, every one who thirsts,
>   come to the waters;
> and he who has no money,
>   come, buy (שִׁבְרוּ) and eat!
> Come, buy (שִׁבְרוּ) wine and milk
>   without money and without price.

This verse has the ring of a stereotyped invitation to buy, but the request, formed with the plural imperative of שׁבר , "to buy"--literally, "to buy grain"--does not belong to the realm of full-fledged legal negotiations. The phrase sounds like the cries one would hear in the market places, and is likely an expression taken over and modified by the prophet from the every day activity of the Israelite market place. We classify this expression with the calls of the vendors because of the particular verb used (שׁבר), as well as the fact that the invitation is so general: it is not a Purchase Request addressed to a particular buyer or seller, but an open appeal.

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At this point the legal negotiations are well under way. They have been formally opened by a Purchase Request, which may or may not have been preceded by some opening remarks, either a formal summons to participate in negotiations, or an ordinary greeting. The next step in the negotiations will necessarily be some type of response to the Purchase Request. The nature of that response will determine the course of the negotiations.

3. Refusals to Buy or Sell

Legal negotiations, only just begun by the Purchase Request, may be cut short if the response to that Request is negative, if the person addressed refused to buy or sell. Thus there are phrases in the Old Testament negotiations which must be understood as definite refusals to buy or to sell. However, there is so much diversity within so few texts of this sort that we are forced to refer to forms of refusal rather than to the formula of purchase refusal.

The most obvious examples of the refusal to sell are found in I K 21, where Naboth's refusal to sell his vineyard to Ahab is repeated three times: "But Naboth said to Ahab, 'The Lord forbid that I should sell you the inheritance of my fathers.' (חָלִילָה לִּי מֵיהוָה מִתִּתִּי אֶת־נַחֲלַת אֲבֹתַי לָךְ׃) (vs. 3); "for he had said, 'I will not give you the inheritance of my fathers.'" (לֹא־אֶתֵּן לְךָ אֶת־נַחֲלַת אֲבוֹתָי) (vs. 4); and "and he answered, 'I will not give you my vineyard.'" (לֹא־אֶתֵּן לְךָ אֶת־כַּרְמִי׃) (vs. 6) And Jezebel alludes to the refusal: "Arise, take possession of the vineyard of Naboth the Jezreelite, which he refused to give you for money...." (מֵאֵן לָתֶת־לְךָ בְּכֶסֶף) (vs. 15)

In Ru 4, the refusal of the go'el to "redeem" Naomi's piece of land is to be construed as a refusal to buy the land, for the request to buy and the formalized request to act as the go'el are parallel, as we have shown above, p. 36. The refusal is given twice: "Then the next of kin said, 'I cannot redeem it for myself (לֹא אוּכַל לִגְאָול־לִי), lest I impair my own inheritance. Take my right of redemption yourself, for I cannot redeem it.'" (כִּי לֹא־אוּכַל לִגְאֹל׃) (Ru 4:6)[1] Another refusal to perform the duty of the go'el is found in Dt 25:8, but in this case is not to be construed as equivalent to a refusal to buy: "Then the elders of his city shall call him, and speak to him: and if he persists, saying, 'I do not wish to take her....'" (לֹא חָפַצְתִּי לְקַחְתָּהּ׃).[2]

Before we seek to outline any consistent formal characteristics of the Hebrew refusal to sell or buy, we should first know something of the Hebrew negative in general. How does one say "No" in Hebrew? Irene Lande points out that there is no simple "no" in Hebrew at all, just as there is no simple "yes." "Just as the simple 'Yes' can be expressed through the repetition of the question, so the repetition of the verb of the question with the prefixed negative particle לֹא (='not') can mean 'no'."[3] Typical of the examples of the negative which she lists is I Sam 3:5,6: "Here I am, for you called me....(no) I did not call."

In light of this discussion of the Hebrew negative in general, the consistent features of the refusal to buy or to sell now become clear. The consistency of the formulation of the refusal to buy is the consistence of the Hebrew negative. The Purchase Refusal, as the Hebrew negative in general, is a response, and as such it picks up the verb of the request or the question and negates it. The diversity, then, of the Purchase Refusal is the diversity of the requests themselves. The refusal is simply the reverse of the request, seen in its simplest form in I K21:6: "Give me [i.e., sell me]....I will not give you [i.e., sell you]my vineyard." The formula is constructed with the imprefect, first person singular of the verb נתן, preceded by לֹא , "not," and followed by the direct object and the indirect object.

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[1] Boecker has already noted the formalized character of this phrase as an element out of the "redemption" ceremony, pp. 163-4.

[2] Unfortunately, there are no explicit refusals to sell or to buy in the Ugaritic myths. In the Aqhat tale the hero refuses to sell his wonderful bow to Anath, but there is a gap in the text where we would expect a refusal formula. When the text resumes Aqhat is telling Anath how she may procure a bow of her own like his. (Text 2 AQHT, col vi, lines 17-28)

[3] Lande, p. 65. There is, however, an "abbreviated" form of the negative expressed with לֹא alone. This has come about, suggests Lande, when the negated verb has fallen out and the negative particle, which originally meant "not" has come to mean "no."

Both of our primary examples of the purchase refusal are definitely related to the laws of property ownership which insist that the land is not to be alienated from the family. Naboth's refusal is in keeping with the law of Lev 25:23: "The land shall not be sold in perpetuity, for the land is mine; for you are strangers and sojourners with me." Naboth says he cannot part with the vineyard because it is נַחֲלַת אֲבֹתָי , the "possession of my fathers," that is, his patrimony. Naboth's stern refusal to sell his land as well as Ahab's certain degree of respect for this decision shows the strong influence of the ancient custom against alienating a man's patrimony,[1] but the very fact that Ahab proposes the sale, as well as the cries of the prophets against those who take over the lands of their neighbors proves that the sale of the patrimony was at least legally possible.[2] There is even an allusion to sale by the Levites in Dt, cited at least without disapproval: "They [the Levites] shall have equal portions to eat, besides what he receives from the sale (מִמְכָּרָיו) of his patrimony." (Dt 18:8) But the conservative injunctions of Yahwism were always opposed to unrestricted sales of land.[1]

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[1] On this cf. Pedersen, Israel, Vol I, 82-3; Vol III/IV, 68-9; and De Vaux, Ancient Israel, p. 166.

[2] Cf. M. Weber, Ancient Judaism, translated by Hans H. Gerth and Don Martindale (Glencoe: Free Press, 1952), pp. 71-2. See Micah 2:2ff; Is 5:8; Joel 4:2b (Eng. 3:2b); Ezek 48:14; 46:16-18.

As we have seen, Ru 4 contains no explicit refusal to purchase, but the *go'el*'s statement of waiver has the same force as a refusal to buy. This refusal, as those in I K 21, is formed by prefixing the negative particle לֹא to the verb of the request, גאל , but the verb יכל is added here: I am not able to redeem (it) for myself. We see from this denial as well as from Dt 25:5-10 and Gen 38 that the duty to act as the *go'el* was, at least to some extent, an optional duty, that is, the custom belonged to the realm of religious injunctions rather than to the sphere of enforced law. The reason for the *go'el*'s refusal in Ru 4 is not clear at all. He was perfectly willing to act as the *go'el*--to buy the piece of land--until he found that marriage to Ruth was included in the transaction. But the reason he gives for his refusal is not that Ruth does not appeal to him, but that he cannot redeem it "lest I impair my own inheritance." Does this mean that he cannot buy the land because the purchase price would deplete his funds, and thus impair his estate?[2]

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[1] Restrictions on the alienation of property are found in other ancient legal traditions besides those of the Old Testament. The Code of Hammurapi says: "In no case is the field, orchard, or house belonging to a soldier, a commissary, or a feudatory salable." (No. 36, Meek's translation in *ANET*, p. 167.) Similar injunctions are also found in paragraphs 35, 37 ff.

[2] This is the interpretation made by some commentators; cf. George A. F. Knight, *Ruth and Jonah* (London: SCM Press, 1950), p. 40.

This is not likely, for it is the information that Ruth is included in the transaction that causes him to change his acceptance to refusal, rather than any statement of price. It is most likely that the information which forced this change of heart is the statement that whoever buys the land takes Ruth, "in order to restore the name of the dead to his inheritance (נַחֲלָתוֹ)." If it is just a matter of the land, the go'el is willing to see that it does not pass out of the family, but he begs off when he finds that he would also be undertaking the responsibility of "raising up" the name of the dead on the inheritance, that is, that the land would not become his but would be held in trust for the issue of Ruth as the rightful heir of Elimelech.[1] Something of this sort is understood to be Onan's reason for neglecting the duty of the go'el with regard to Tamar, his brother's widow: "But Onan knew that the offspring would not be his; so when he went to his brother's wife he spilled the semen on the ground, lest he should give offspring to his brother." (Gen 38:9) That the aim of the go'el customs was to preserve the name of the dead kinsman is also seen in Dt 25:5-10.

4. Seller Speeches

The Purchase Request to the seller always demands some response, whether it be the flat refusal to sell or some form of positive reply. Since the first element of the negotiations proper is the Purchase Request, the second element in the negotiations is ordinarily either a

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[1] Cf. also Pedersen, Israel, Vol I, pp. 92-3.

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purchase refusal or a Seller Speech, the positive reply. Though a variety of responses can be made by the seller, certain formal customs appear always to be observed in the full-blown legal negotiations, the Seller Speeches being formulated with stereotyped phrases and set clichés.

One line which the seller may take in response to the Purchase Request is simple acceptance of the request, whereby he agrees to sell what is requested without further bargaining or discussion. Let us, however, examine this response before we assume that simple acceptance of the buyer's proposed terms is the "normal" content of the Seller Speech. Esau's response to Jacob's Purchase Request (Gen 25:31-32) is to be understood as acceptance of Jacob's proposal: "Jacob said, 'First sell me (מִכְרָה...לִי) your birthright.' 32 Esau said, 'I am about to die; of what use is a birthright to me?'" The seller responds impatiently to the request, but accepts. The Seller Speech by Hiram of Tyre to Solomon is also a simple acceptance of the terms of the proposal: "And Hiram sent to Solomon, saying, 'I have heard the message which you have sent to me; I am ready to do all you desire in the matter of cedar and cypress timber. 9 My servants shall bring it down to the sea from Lebanon; and I will make it into rafts to go by sea to the place you direct, and I will have them broken up there, and you shall receive it; and you shall meet my wishes by providing food for my household.'" (I K 5:22-23, Eng 8-9) In his Purchase Request, Solomon had left the matter of reimbursement open, and Hiram has included the price in his acceptance of the proposal.[1]

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[1] Cf. pp.63 ff. for a further discussion of this text and this type of Seller Speech as a means of concluding the negotiations.

The price of the requested commodity is also given in Joseph's address to the Egyptians who ask to buy food but say they have no more money: "And Joseph answered, 'Give your cattle, and I will give you (וְאֶתְנָה לָכֵם) food in exchange for your cattle, if your money is gone.'" (Gen 47:16)[1] Joseph makes a similar speech to his brothers who ask for grain, but this time a qualification not given in the request is included in the Seller Speech: "Then the man, the lord of the land, said to us, 'By this I shall know that you are honest men: leave one of your brothers with me, and take (קְחוּ) grain for the famine of your households, and go your way.'" (Gen 42:33) In this case, the situation has been complicated by the introduction of the issue of the honesty of the buyers between the Purchase Request and the Seller's Speech. However, both of Joseph's speeches are positive replies to Purchase Requests, each speech granting the requests to buy.

Even though all of these Seller Speeches have been responses to Purchase Requests, and have been part of a sale of some sort, not one of them is found in the course of full-fledged legal negotiations. In none of these cases is the entire process described. While the legal negotiations are never given in entirety in the Old Testament, we have seen that the texts which describe the purchase of real estate give a fuller picture of the transaction ceremony. These texts where a fuller description of the Seller Speeches is given are Gen 23:6,11; II Sam 24:22-23; and I Ch 21:23.

As we turn to these texts we notice immediately that we are once again in the realm of extremely courteous negotiations. In all four of these texts, the seller responds to the Purchase Request with an offer to give the property to the buyer: "Then Ornan said to David, 'Take it (קַח־לָךְ); and let my lord the king do what seems good to him; see, I give (נָתַתִּי) the oxen for burnt offerings, and the threshing sledges for the wood, and the wheat for a cereal offering. I give it all (הַכֹּל נָתָתִּי).'" (I Ch 21:23) From this point onward in the proper negotiations, each party tries to surpass the other in generosity, at least on the surface. The seller's response is to offer much more than was asked for: It is not necessary to buy; I will give it to you. The Seller's Speech is, in form at least, virtually equivalent to a gift offer,[1] but we must ask whether the seller actually intends to give the property or is simply fulfilling the demands of etiquette. It is clear in all these cases that נתן is to be read "I give" and not "I sell," because the reply of the buyer in each case is: No, I will pay for the property. It is as if the buyer has to emphasize that what he meant by נתן was "sell me," and not "give me." David replies to Ornan's Seller Speech: "But King David said to Ornan, 'No, but I will buy it (קָנֹה אֶקְנֶה) for the full price; I will not take for the Lord what is yours, nor offer burnt offerings which cost me nothing.'" (I Ch 21:24) It is fruitless to ask what would happen if the buyer actually accepted the property as a gift, for this is never done. The buyer has already committed himself in public to paying for the property, so the seller is perfectly safe in offering the goods as a gift, for the buyer will now try to exceed his generosity. The seller's purpose, then, in this speech, is to obligate the buyer to him with kindness.[1]

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[1] Cf. pp. 63 ff.

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[1] For offers of gifts in this form, cf. Gen 15:18; 48:22; I K 3:12,13; Est 8:7. e.g.: "I give you (נָתַתִּי לָךְ) also what you have not asked, both riches and honor...." (I K 3:13)

In spite of the great diversity of responses on the lips of the seller to Purchase Requests, one is able to observe some consistent formal elements about the Seller Speeches when found in the context of polite negotiations. Ephron's reply to Abraham reflects these elements: "But my lord, hear me; I give you the field (הַשָּׂדֶה נָתַתִּי לָךְ), and I give you (נְתַתִּיהָ) the cave that is in it; in the presence of the sons of my people I give it to you (נְתַתִּיהָ); bury your dead." (Gen 23:11) The expression is constructed around the verb נתן , here in the first person sing. qal perfect. In this speech the verb is followed by two objects each time it is used. The tense employed in this formula is commonly interpreted as the "perfect of certitude."[2] The grammars note that this tense is used in contracts or other explicit stipulations to express future actions which the speaker intends to represent as finished, so certain is he that they will be fulfilled.[3] The qal perfect first person singular is used also in I Ch 21:23, but the third person of the verb is used in II Sam 24:23. As we have noted above, the form is identical to the form used in offering gifts.

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[1] So also von Rad, Genesis, on the Hittites' offer to "give" Abraham land. "Even today the seller avoids the coarse word 'sell', which one feels to be an insult for the honored buyer. One wants to 'give it,' 'bestow it,' and thus obligates the buyer even more with such generosity. Abraham already knows from this noble gesture that he will have to pay a great deal." p. 243. Quite a different solution to the problems of Gen 23 is proposed by M. H. Lehmann who relates the transaction to Hittite law. ("Abraham's Purchase of Machpelah and Hittite Law," BASOR, 129 (Feb., 1953), pp. 15-18.) Cf. also C. H. Gordon, "Abraham and the Merchants of Ura," JNES, 17 (1958), pp. 28-31, and Loren R. Fisher, "Abraham and his Priest-King," JBL, LXXXI (1962), pp. 264-70.

[2] W. R. Harper, Elements of Hebrew Syntax, 3rd ed. (New York: Chas. Scribner's Sons, 1892), p. 56; G. J. Spurrell, Notes on the Book of Genesis, second ed. (Oxford: The Clarendon Press, 1896), p. 216.

[3] GKC, p. 312; J. B. Ewald, Lehrbuch der Hebräischen Sprache, part III, Syntax, translated by Kennedy (Edinburgh: T. & T. Clark, 1879), p.5.

Gunkel understands the Seller Speech of the Hittites[1] in Gen 23:6 as an attempt to actually dissuade Abraham from purchasing property among them. "Behind the courtesy of the Hittites is hidden their disinclination against the purchase: Abraham ought, according to their will, not acquire a possession of land and with it legal rights in Hebron, but should remain a 'sojourner' dependent upon the kindness of the citizens."[2] But this seems to be an unwarranted reading of the minds of the Hittites. The statement is a perfectly normal statement by a seller, corresponding--as far as we can determine--to the other seller statements in the legal negotiations of the Old Testament.[3] Our interpretation is borne out by the similar speech in II Sam 24. There is certainly no justification for understanding Araunah's generous offer (II Sam 24:22,3; I Ch 21:23) as showing that he was actually more willing to give the threshing floor to David than to sell it to him in order to keep the king from becoming a land owner in Jerusalem.

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[1] The conclusion that this verse is a Seller Speech is not altered by the fact that eventually the seller is not the Hittites as a whole but the one Hittite Ephron. At this point in the process, no more definite seller is announced than the Hittites in general. The speech is marked as a Seller Speech because it is a response to a Purchase Request and contains an offer to give the requested sale commodity to the buyer.

[2] Gunkel, Genesis, p. 243.

[3] von Rad sees in the statement no denial of the request, but thinks the Hittites have ignored Abraham's request for property of his own. (Genesis, p. 243) This is precisely what the Hittites have done, for this is the "normal" treatment given to Purchase Requests in the polite negotiations. The request to buy is not recognized by the seller, but an offer to fulfill the request is issued.

Observers of modern customs in Palestine have noted that many of the forms of the polite transactions in the Old Testament are still in use today. Benzinger[1] noted that even in modern times it was a standing phrase of the seller to say: "Take it without charge, I give it to you," in order to make the most of the bargain. Elihu Grant recorded a similar experience in Palestine:

> Striking a bargain is a tedious process to the stranger, but an exercise of great interest to the native and full of possibilities. He declares that the business arrangement shall be as you like, utterly. He is a servant of God, he seeks not money but your happiness, your good-will. Is not that the sweetest possession, the love and favor of brothers? If it is a house that you are trying to rent at a decent price, he says, 'What is such a thing as that between us? Take it for nothing.' An utter stranger once came to my door with a young gazelle which he had found in the wilderness. He declared that it was a present to me. I offered him forty cents for it and he demanded sixty. I gave him the forty, however, promising the other twenty if the little creature lived.[2]

That these examples are by no means isolated or exceptional is seen by Lane's observations of Egyptian custom:

> The peasants will often say, when a person asks the price of any thing which they have for sale, 'Receive it as a present': this answer having become a common form of speech, they know that advantage will not be taken of it; and when desired again to name the price, they will do so, but generally name a sum that is exhorbitant.[3]

Judging from the similar forms of speech in the Old Testament, one can see that such expressions became common in the Near East long before the nineteenth century A. D.

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[1] J. J. Benzinger, Hebräische Archaeologie (Freiburg: J.C.B. Mohr (Paul Siebeck), 1894), p. 172.

[2] Elihu Grant, The Peasantry of Palestine (New York: The Pilgrim Press, 1907), p. 147.

[3] E. W. Lane, An Account of the Manners and Customs of the Modern Egyptians (5th edition, 1860), ii, pp. 13 ff., cited by John Skinner, A Critical and Exegetical Commentary on Genesis, ICC, Vol I (New York: Charles Scribner's Sons, 1910), p. 338. Underlining is my own.

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With the conclusion of the Seller Speech, the second round of the negotiations are brought to an end. The opening round had seen the transaction begun by the Purchase Request (often preceded by either a formal summons or more common greetings), while the second round consisted of the responses to the Purchase Request. These responses were either the refusal to purchase, or a Seller Speech, the positive response. From this point on in the negotiations, however, the formulae are not easy to classify as to position in the process. While the Buyer Speeches (see below) are usually responses to the Seller Speeches, there may be more than one Buyer Speech in the same negotiations. Furthermore, it is this "middle part" of the negotiations which is the most irregular. The beginnings and the conclusions are the essential elements; the number and length of the Buyer Speeches and the haggling forms are somewhat variable, their extent being determined by the degree of difficulty in reaching an agreement on terms and conditions.

5. Buyer Speeches

The Buyer Speeches which we treat here, just as the Seller Speeches in the preceding section, must be considered types of addresses in a standardized style rather than firmly stamped formal phrases such as we see, for example, in the Purchase Requests. Just as there are many possible Seller Speeches, so there are many different Buyer Speeches, but bound together by a common, custom-honored style of expression. The Buyer Speeches may come at various places in the negotiations, depending upon the extent of the negotiations themselves: indeed, they may come at more than one place in the same negotiations, as we shall see. Some of our evidence even indicates that it was the rule for fully developed negotations to involve several speeches by the buyer, as well as several by the seller. Such is the case in Gen 23 with its repetition of speeches which are essentially the same. But the essence of the Buyer Speech, whether there be one speech or several and regardless of the place of the speech in the negotiations, is an offer of payment for the property being sold.

Examples of the Buyer Speeches in the context of legal negotiations are found in the ceremonies described in Gen 23, II Sam 24, and I Ch 21. Typical is the speech of Abraham to Ephron: "And he said to Ephron in the hearing of the people of the land, 'But if you will, hear me; I will give you the price of the field; accept it from me, that I may bury my dead there.'" (Gen 23; 13) David's address to Araunah is similar: "But the king said to Araunah, 'No, but I will buy it of you for a price; I will not offer burnt offerings to the Lord my God which cost me nothing.'" (II Sam 24:24a)

We are now able to summarize the common characteristics of the Buyer Speeches in Gen 23:8-9,13; II Sam 24:24; and I Ch 21:24. In the first place, they are all offers of payment for the property in question. Secondly, these offers of payment are made in response to the seller's offer of the property as a gift, the typical Seller Speech described above. Thirdly, the mood of these speeches is one of urgent insistance upon paying, the buyer politely but firmly urging a generous payment upon the seller. Fourth, in each case the buyer follows his insistance upon paying with one or more modifying clauses giving his reasons either for wanting the property or for buying the property rather than accepting it as a gift. David insists upon paying--rather than accepting freely--the threshing floor because, he says, "I will not take for the Lord what is yours, nor offer burnt offerings which cost me nothing." (I Ch 21:24) But when Abraham says, "But if you will, hear me; I will give you the price of the field; accept it from me, that I may bury my dead there," it is not clear whether he is simply giving his reasons for wanting the property or stating why he must pay for the field rather than accept it as a gift. Most commentators on Gen 23 interpret this purpose as specifying why the burying place must be bought through legal negotiations and paid for fully and even generously. Gunkel says: "Refined people, who held to honor, didn't bury their dead in borrowed or given graves, but on their own ground."[1] It would, he says, degrade the patriarch if Abraham had only borrowed or been given land for a grave. (p. 242) But we must note that here, as in II Sam 24 and I Ch 21, the secondary clause in the Buyer Speech corresponds to the secondary clause in the Purchase Requests, probably indicating that in Gen 23:9,12, Abraham is simply giving his reasons for wanting the cave.

In most respects Ahab's Buyer Speeches in I K 21 correspond to the others we have seen: "And after this Ahab said to Naboth, 'Give me your vineyard, that I may have it for a vegetable garden, because it is near my house; [Purchase Request] and I will give you a better vineyard for it; or, if it seems good to you, I will give you its value in money.'" [Buyer Speech] (I K 21:2, cf. also vs. 6) The speech is an offer to pay, in the same mood as the other speeches: polite but firm insistance upon paying for the property in question. Furthermore, it is connected with modifying clauses giving the reasons for the purchase. But there are significant differences. In the first place, the speech is but a continuation of the Purchase Request itself. Consequently, this Buyer Speech does not come in response to a Seller Speech with its offer of the property as a free gift.

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[1] Gunkel, Genesis, p. 242.

We must ask ourselves why there are neither Buyer nor Seller Speeches in the transaction described in Jer 32. Is this transaction abbreviated, and if so, why? Or is it possible that the cases we have examined are actually expanded and that Jer 32 gives us a more accurate description of the legal negotiations? Examination of Jer 32 supports our impression that the former is the case. In Jer 32 the transaction is recorded in the briefest manner, the account stating what happened without quoting any of the parties further than the Purchase Request. Jeremiah's response to the Purchase Request is not cited, though he surely responded. No transaction could possibly be concluded without further discussion of the terms, conditions, and the price of the land, even though we are told from the beginning that Jeremiah intends to accept the offer, presumably without haggling over the price. It is also very likely that negotiations dealing with the responsibility of the go'el were not so concerned about the price of property, though a price is mentioned in this transaction.

There is another class of Buyer Speeches which we might call the Buyer Speech in its simplest form. Such speeches may be connected closely with the Purchase Request (as in I K 21:2,6), or may follow immediately upon the Purchase Request. One example is found in Nu 20:19: "And the people of Israel said to him, 'We will go up by the highway; and if we drink of your water, I and my cattle, then I will pay for it (וְנָתַתִּי מִכְרָֽם); let me only pass through on foot, nothing more.'"--In Haman's attempt to destroy the Jews, he buys the decree of the king, promising payment: "If it please the king, let it be decreed that they be destroyed, and I will pay (אֶשְׁקוֹל) ten thousand talents of silver into the hands of those who have charge of the king's business, that they may put it into the king's treasuries.'" (Est 3:9, cf. also 4:7)--And the 'Lords of the Philistines' promise payment to Delilah for discovering the root of Samson's strength: "Entice him, and see wherein his great strength lies, and by what means we may overpower him, that we may bind him to subdue him; and we will each give you (נִתַּן־לָךְ׃) eleven hundred pieces of silver." (Ju 16:5) But these "simple" offers of payment are not found in the context of polite, legal negotiations, and hence are not to be understood as the standard process in full-fledged bargaining. They meet only the most basic criteria for the Buyer Speeches, being statements by the buyer offering payment, usually employing the verb נתן.

Some examples of the Buyer Speeches are found in the Ugaritic texts. Note here also the mood of urgent insistance upon payment which we have seen in the Buyer Speeches in polite negotiations. Anath is trying to persuade Aqhat to sell her his marvelous bow, saying:

A]sk for silver, and I'll give it thee;	[laqht ǵzr i] rš ksp . watn!k
[For gold, and I'll be]stow't on thee;	[ḥrṣ waš]lḥk . wtn . qšt[k]
But give thou thy bow to me;	[ly tq]ḥ [q]s! ʿtk . ybmt . limm
Let] Yabamat-Liimmim take thy darts.'	

……………………………………

Then Quoth the Maiden Anath:	ʿnt.irš ḥym . laqht . ǵzr
'Ask for life, O Aqhat the Youth.	irš ḥym . watnk . blmt
Ask for life and I'll give it thee,	wašlḥk . ašsprk . ʿm . bʿl
for deathlessness, and I'll bestow't on thee.'[1]	

6. Haggling Forms

As common as vigorous bargaining is the world over, we would be very surprised indeed if we did not find traces of haggling in the legal and commercial negotiations of the Old Testament. By "haggling" we mean, in the broadest sense, a series of interchanges between buyer and seller whereby each party tries to make the most of the transaction under consideration. To haggle is to argue about terms, prices, and conditions of a sale. It is obvious, then, that all of the polite expressions of the legal negotiations are to be included under this broad definition of "haggling," in so far as the purpose of these expressions of elaborate courtesy is to secure the best settlement possible.[2]

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[1] 2 AQHT col vi, lines 17-28. Translation from Ginsberg, ANET, p. 151. On this text cf. especially W. F. Albright, "The 'Natural Force' of Moses in the Light of Ugaritic," BASOR, 94 (April, 1944), pp. 32-35. A somewhat different translation is proposed by Albright, but the formulae which we are considering are not altered.

[2] Cf. pp. 16 ff. for a discussion of the purposes of the polite expressions of the legal negotiations.

But some of the expressions of the legal negotiations are to be classified as forms of haggling in a somewhat more specific sense. Look, for example at Gen 23:11. Ephron is speaking: "But my lord, hear me; I give you the field, and I give you the cave that is in it; in the presence of the sons of my people I give it to you; bury your dead." Abraham had asked for the cave; Ephron offers to give him the cave and the field. The subtle nuances of the interchange suggest that now Ephron has stated what he is willing to sell: You may buy the cave, but you must take the field as well. It seems that Abraham first of all wanted to buy the cave at the end of the field, but that Ephron offered him not only the cave but the entire field.[1] This interpretation of Gen 23:11 is borne out by the transaction in II Sam 24:22: "Then Araunah said to David, 'Let my lord the king take and offer up what seems good to him; here are the oxen for the burnt offering, and the threshing sledges and the yokes of the oxen for the wood." (cf. also I Ch 21:23) David had asked for the threshing floor; Araunah offers to give the threshing floor, as well as the essentials for the offering. In both of these transactions, the seller is making a definite, if subtle, expression of what he is willing to sell. This is not a direct haggling over the price, but a way of haggling over what is to be included in the sale. We see here very polite bargaining over the terms and conditions of the sale rather than directly over the price of the property, a bone of contention which is perhaps more familiar to us. Of course, by including additional property in the transaction, a higher price is expected, hence the purpose of increasing the amount of property to be sold is to increase the price demanded. The texts which we have cited here are, of course, Seller Speeches. We saw that the essence of the Seller Speech was the offer of property as a gift; we now see how the Seller Speech may be classified as a subtle form of haggling.

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[1] Gunkel, Genesis, p. 244.

But we find allusions in the Old Testament to an even more vigorous and less subtle form of bargaining, which fully deserves the more or less colloquial title of "haggling." One of the more obvious allusions is in Ps 44:13 (Eng 12), where God is reproached with the words:

> "Thou hast sold thy people for a trifle,
> demanding no high price for them." RSV
>
> תִּמְכֹּר־עַמְּךָ בְלֹא־הוֹן
> וְלֹא־רִבִּיתָ בִּמְהִירֵיהֶם׃

We see here that the essence of haggling on the part of the seller is the attempt to raise the price as high as possible. (Cf. KB. This text is the only example of the verb רבה in the sense of raising prices, or trying to make a profit.)

Other allusions to bargaining are found in Job:

> "You would even cast lots over the fatherless,
> and bargain (וְתִכְרוּ) over your friend." (6:27)
>
> "Will traders bargain (יִכְרוּ) over him?
> Will they divide him up among the merchants?" (40:30, Eng 41:6)

The verb כרה is also used in Hos 3:2, where we take it to mean simply "to buy": "So I bought her (וָאֶכְּרֶהָ) for fifteen shekels of silver and a homer and a letrech of barley." Another use of the verb in the sense of striking a bargain is found in Is 57:8, where Israel is accused of selling herself as a harlot: "and you have made a bargain for yourself with them....(וַתִּכְרָת־לָךְ)."

Direct quotes of the haggling formulae are rare, but at least one clear example is found in the Old Testament:

"'It is bad, it is bad,' says the buyer; רַע רַע יֹאמַר הַקּוֹנֶה
but when he goes away, then he boasts." (Prov 20:14)

This expression רַע רַע seems to be a formula, certainly a typical expression in the mouth of a buyer belittling property or merchandise in order to lower the price to suit himself. The mood of the expression is lively and vigorous, reflecting the heat of controversy and rapid discussion. This mood is carried out through the shortness of the expression and the repetition of the word רַע. Obviously the buyer does not mean what he says when he disparages the property, for when he concludes the bargain, "he boasts."

The evidence is not sufficient for us to determine the precise Sitz im Leben of these more vigorous haggling formulae, further than that they belong with the economic transactions of Israel in the broadest sense. The further question of whether they come from the bargaining of the market place or the more complicated ceremonies of the legal negotiations cannot be answered with certainty. It is more likely, in view of the harsh sound of the expressions and the use of polite "haggling" in the legal negotiations, that these short, rough forms belonged originally in the market place. However, the lack of sufficient evidence precludes any definite conclusion on this point.

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As we have seen, the Seller Speeches, the Buyer Speeches, and the haggling forms are all expressions used by the parties in the negotiations to bring the discussion to a conclusion satisfactory to themselves. These forms, then, are essentially bargaining forms. The bargaining phase of the negotiations comes to an end when one of the parties proposes terms which are satisfactory to the other party; it is then time to bring the negotiations to a close.

7. Forms which Conclude Negotiations

a. Statement of Price--How do the parties to legal negotiations finally bring their negotiations to a close? It appears from some of the reports of the transactions in the Old Testament that one means of closing the bargaining process is the seller's simple statement of the price he is willing to accept for the property under discussion. Such seems to be the case in Gen 23, where Abraham has been forced--by the extreme courtesy of the Hittites--to insist that he is anxious to buy the cave of Machpelah, and even to imply that he is willing and able to pay "the price of the field," no matter what the price may be. Then Ephron finally mentions the value of the field: "My lord, listen to me; a piece of land worth four hundred shekels of silver, what is that between you and me? Bury your dead." (Gen 23:15)[1] Abraham accepts these terms and the negotiations are concluded. The statement of price has been made casually, almost disdainfully, as if the parties consider it impolite to discuss prices. Ephron's statement of the price is given as a rhetorical question, such as found many times in the Old Testament, expecting "no" or "no one" as the answer.[1] But again we recognize the mood of this address as another aspect of the so-called "Oriental politeness"[2] which pervades the entire process. The coarse bargaining of the market place whereby the buyer tries to get the price lowered through objections and disparaging comments about the property would be completely out of place in this particular process. But in the polite negotiations, when the price has been stated by the seller, the negotiations usually are brought to an abrupt close. Such would not be the case in bargaining built around a less subtle form of haggling.

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[1] The expression אֶרֶץ...כֶּסֶף is to be understood as a noun clause, literally, "land is 400 shekels," and thus "land worth 400 shekels."

There are examples in the Old Testament of the statement of the price which the seller asks for his goods in a more straightforward style. When Hiram of Tyre replies to Solomon's request to buy timber, he says simply that the price which Solomon must pay is: "You shall meet my wishes by providing food for my household." (I K 5:23b, Eng 9b) As we have seen above (p.47), this statement is to be classified as a Seller Speech. But it also marks the conclusion of these negotiations, since Solomon had stated his willingness to "pay you for your servants such wages as you set...." (I K 5:20, Eng 5:6)

Another example of negotiations concluded through the statement of the price by the seller in an ordinary Seller Speech is found in the story of the famine in Egypt, when Joseph had gathered all the money in Egypt and the Egyptians come to him to buy food but have no money:

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[1] Similar questions are also found in II Sam 9:8; Ex 16:7; Nu 16:11, though not in the course of legal negotiations. Cf. Lande, pp. 101-2, for a discussion of these texts, including Gen 23:15, under the category, "Die Formel der Herabsetzung."

[2] Cf. Gunkel, Genesis, p. 244. Von Rad says: "Ephron mentions the price in passing as though it were the least of his concerns." Genesis, p. 243.

"And Joseph answered, 'Give your cattle, and I will give you food in exchange for your cattle, if your money is gone.'" (Gen 47:16) When the "price" for the food is stated, the negotiations are concluded.

Some statement of the price of the goods being sold, whether by the seller or the buyer, is an essential--even constituent--element of legal negotiations or bargaining of any sort. How can anything be sold if the price is not mentioned? Yet most of the accounts of negotiations in the Old Testament fail to note who raised the question of price, or how the price was stated. Such is the case in II Sam 24; I Ch 21; Jer 32; and Ru 4, some of our most fully documented Old Testament transactions. Yet, with the exception of Ru 4, all these reports make explicit notice of the price of the property which changes hands. Further, there are many brief notices of sales which list the price of the property sold.[1] Since it is absolutely necessary in negotiations for one of the parties to first raise the price, we must conclude that the accounts of these transactions--rather than the transactions themselves--are abbreviated.

b. Acceptance of Terms--When the price has been mentioned only one step remains in the negotiations proper, the acceptance of the terms by the other party. When Ephron finally suggests the value of the cave and field of Machpelah, we are told: "Abraham agreed (וַיִּשְׁמַע...אֶל־) with Ephron...." (Gen 23:16) This third person statement that Abraham accepted the terms proposed is, of course, not a direct quote of the patriarch's statement of acceptance. Here, as with other forms of the negotiations, we have more allusions to the acceptance of terms than we have examples of the actual forms of speech themselves. But in these allusions, the verb שׁמע continually recurs. Asa sends a message to Ben-hadad proposing a league (בְּרִית) against Israel, "And Ben-hadad agreed with (וַיִּשְׁמַע...אֶל־) King Asa, and sent the commanders of his armies against the cities of Israel...." (I K 15:20a, cf. also II Ch 16:4a) Ahaz sends messengers with presents to Tiglath-pileser of Assyria asking for an alliance against Damascus and Israel, "And the king of Assyria agreed with him (וַיִּשְׁמַע אֵלָיו); the king of Assyria marched up against Damascus...." (II K 16:9a) And the Israelites give as their condition for agreement with the men of Shechem the circumcision of all the males of Shechem, saying: "But if you will not agree with us (תִשְׁמְעוּ אֵלֵינוּ) and be circumcised, then we will take our daughter, and we will be gone." (Gen 34:17) In all of these texts which we have cited, the RSV translates שׁמע "hearken," except Gen 23:16, which it translated "agreed." In view of the context of negotiations in each case, a translation which bears the connotations of "agreement" seems more satisfactory.[1]

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[1] See I K 16:24; Jer 24:32; Gen 33:19; 37:28; Jos 24:32; Ju 9:4.

There is, fortunately, at least one example of the form of acceptance explicitly quoted in the Old Testament where the verb שׁמע is used: "And Hiram sent to Solomon, saying, 'I have heard the message which you have sent to me (שָׁמַעְתִּי אֵת אֲשֶׁר־שָׁלַחְתָּ אֵלָי); I am ready to do all you desire in the matter of cedar and cypress timber.'" (I K 5:22

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[1] Other texts in which שׁמע is employed in a sense similar to Gen 23:16 are Gen 34:24; I K 12:15,16; II Ch 10:15,16; Ju 11:17.

(Eng 8)) This first person Seller Speech may be taken to reflect the more or less typical form of agreement speech in the Old Testament, in view of the use of שׁמע in the allusions to coming to terms.[1]

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With the close of the legal negotiations, the formalities of property transfer are only half completed. The terms of the sale have been agreed upon, but the transfer must be solemnized before transfer is actually effected. It is to the solemnization of the agreement, the contract, that we now turn.

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[1] But other forms of agreement to terms are found in the Old Testament. When David commands Shimei to stay in the city of Jerusalem, Shimei replies: "What you say is good (טוֹב); as my lord the king commands, so will your servant do." (I K 2:38) When Shimei breaks the agreement, David charges: "And you said to me, 'What you say is good; I accept.'" (טוֹב הַדָּבָר שָׁמַעְתִּי׃) (I K 2:42) Here טוֹב is combined with the same verb we have seen above, שׁמע . And the elders of Gilead accept Jephthah's terms with the words: "The Lord will be witness between us; we will surely do as you say." (Ju 11:10b)

CHAPTER II

THE SALE CONTRACT

When the terms and conditions for the purchase of a piece of property have been discussed and settled, there remains only the formality of making the agreement official: the deed must be drawn up. C. H. W. Johns' description of the process in the Babylonian laws and contracts sheds light on the Old Testament formalities:

> There were the same formalities as in all deeds. First the purchaser approached the vendor and there was an interchange of ideas, often through a third party, prolonged over a considerable space of time. When etiquette had been satisfied and all the preliminary haggling was over, the parties agreed upon a scribe, who was made acquainted with the terms of the sale, already verbally agreed upon, and he set down in the imperishable clay the legal instrument which should bind the parties to their contract forever.[1]

We see a similar process in operation in the transactions of the Old Testament. The most obvious Old Testament parallel to this Babylonian pattern is Jer 32. Hanamel approaches Jeremiah and requests that he buy the field at Anathoth. Nothing more is recorded of the negotiations proper except the fact that Jeremiah bought the field. (Negotiations must have followed Hanamel's request, else how could they have arrived at the price of the field and the terms and conditions of the deed?) We hear then that Jeremiah weighed out the money and signed the deed and sealed it. This contract, as the Babylonian contracts, was a written conveyence.

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[1] C. H. W. Johns, Babylonian and Assyrian Laws, Contracts, and Letters, p. 227.

But the transaction of Jer 32 is our only Old Testament reference to a written bill of sale; most of the negotiations are solemnized orally. However, even these orally solemnized transactions follow the same basic pattern observed by Johns in the Babylonian contracts. In Ru 4:1-12, the principals to the transaction exchange ideas about the "redemption" of Naomi's land and then, when the matter is decided, Boaz recites what has been agreed upon in what is, in effect, an oral contract, witnessed by "all the people who were at the gate, and the elders." (Ru 4:11) Abraham's purchase of the cave and field from Ephron follows the same pattern. First come the extended negotiations over the purchase, culminating in Abraham's agreement to Ephron's terms, then the affair is summarized in words which resemble the contracts which have been found in virtually all parts of the ancient Semitic speaking world: "16b And Abraham weighed out for Ephron the silver which he had named in the hearing of the Hittites, four hundred shekels of silver, according to the weights current among the merchants. 17 So the field of Ephron in Machpelah, which was to the east of Mamre, the field with the cave which was in it and all the trees that were in the field, throughout its whole area, went over 18 to Abraham as a possession in the presence of the Hittites, before all who went in at the gate of his city....20 The field and the cave that is in it went over to Abraham as a possession for a burying place from the Hittites." (Gen 23:16b-18,20)

These few texts are sufficient to show that the contract could be either a written document (as in Jer 32), or simply an oral agreement, no less formal and rigid than its written counterpart. De Vaux has already observed how the contract may be oral as well as written. The record of sale, he says, may be the oral contract before witnesses in a public place, usually the town gate. The terms of Abraham's contract with Ephron, he points out, are as precise as a legal deed and comparable to the contracts on cuneiform tablets, giving a description of the land, the names of the parties, and the witnesses.[1] Oral contracts, then, must have been no less valid than written documents of transfer.

The first problem in discussing the contracts of the Old Testament is how to recognize the Hebrew contracts. It is a simple matter to find and identify contracts when a single document is recorded on a single clay tablet--as in most of the Akkadian deeds--or a single sheet of papyrus --as in most of the Aramaic documents from Elephantine. But when the contracts are surrounded by numerous other forms of speech and writing-- as in the case of the Old Testament contracts--one must discover how to separate the contract forms from the other forms. The line between the negotiation forms and the forms of the contract often is especially difficult to discern, as is the situation in Gen 23. But the contracts of the Old Testament can be identified and distinguished from the forms of the negotiations as well as other forms if we apply two criteria, the style of expression, and the purpose of the forms of speech or writing.

a. The Style of the Contract--Gunkel,[2] as well as many commentators after him,[1] noted that the last few verses of Gen 23 are in the style of the purchase contract (*im Stil des Kaufbriefs*). But none of these commentators described the style of the contract. A. Bentzen, however, has characterized the forms of the contracts as generally very "functionalistic," observing that the Old Testament examples of the contract are in a very "matter of fact style, as befits the situation."[2] (He includes in this category covenants and treaties as well as economic contracts.) These adjectives are helpful, but they do not provide us with the answer to our problem of identifying the contracts in the context of other forms. We need to know what is *distinctive* about the style of the contract, that which sets its forms apart from other forms.

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[1] De Vaux, Ancient Israel, pp. 167-8.

[2] Genesis, p. 244.

So let us look at a document which we know to be a contract and begin by describing its style. A typical Akkadian sale contract among the documents found at Ras Shamra reads as follows:

(Dating) from this day	iš-tu ûmi^{mi} an-ni-i
before witnesses	a-na pa-ni $^{amil\ M}$ši-bu-ti
Puluzinu	^{l}pu-lu-zi-nu
has acquired a vineyard	il(?)-te-q̣ì(?) ^{is}karana ^{na}
from Aḫliyanu,	iš-tu ^{l}aḫ-li-i̯a-na
at the price of 57 (shekels of)silver	i-na 57 kaspi
(This) vineyard	^{is}karânu^{nu}
is attached	ṣa-mi-id
to Puluzinu	a-na ^{l}pu-lu-zi-na(sic!)
and to his sons	ù a-na mari^{M}-šu
forever.	a-da-ri-ti
Witness: Tešamanu.	šîbu Tešamanu
Witness: Armeya.	šîbu Armeya
Witness: Entasalu.	šîbu Entasalu
Witness: Beyanu.	šîbu Beyanu.[3]

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[1] Skinner, *Genesis*, p. 338; von Rad, *Genesis*, p. 244; Cf. also B. Jacob, *Das Erste Buch der Tora Genesis* (Berlin: Schocken Verlag, 1934), pp. 511-12.

[2] A. Bentzen, *Introduction to the Old Testament*, p. 211.

[3] *PRU* III, Text 15.37, p. 35.

The style of this document is very simple and straightforward. It is a clear and concise record of the results of negotiations between a buyer, Puluzinu, and a seller, Aḫiliyanu, confirming that the vineyard is now the property of Puluzinu, who has paid the price of fifty-seven shekels of silver. The style is annalistic, resembling more than anything else scribal minutes of a discussion, or at least the recapitulation of what is settled in the negotiations. The point of view is that of the scribe. The words are those of the scribe, not of the parties to the agreement, who are mentioned by the scribe in the third person. The scribe has either been present at the negotiations or has been informed of the agreement which is now confirmed "before witnesses" and has legal effect "forever." (We shall discuss the various elements in the schema of the Ras Shamra Akkadian texts below, pp. 75 ff.)

The narrative of Gen 23:16b ff. follows a similar pattern, showing that these verses contain at least the traces of a formal contract. These verses summarize the negotiations between Ephron and Abraham. We may classify this particular style as the "objective" contract style. By "objective style" we mean that this contract is drawn up from the perspective of a non-participant in the negotiations and sale. This objective, more or less narrative style is characteristic of most--but surely not all-of the Old-Babylonian, Neo-Babylonian, and Assyrian documents of transfer.[1]

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[1] M. San Nicolo, "Zur Entwicklung der Babylonischen Urkundenformen," in Festschrift Hanausek (Graz: Ulr. Mosers Buchhandlung, 1925), p. 25. Cf. also Yaron, "The Schema of the Aramaic Legal Documents," JSS, 2(1957), pp. 55-56. On the Assyrian documents, cf. Kohler and Ungnad, Assyrische Rechtsurkunden (Leipzig: E. Pfeiffer, 1913), p. 447.

But there are contracts in the Old Testament which do not conform to this objective, narrative style. Boaz is clearly formalizing a contract when he says: "You are witnesses this day that I have bought from the hand of Naomi all that belonged to Elimelech and all that belonged to Chilion and to Mahlon. Also Ruth the Moabitess, the widow of Mahlon, I have bought to be my wife...." (Ru 4:9-10a) This contract is subjectively formulated--as most oral contracts must have been--with the buyer stating what has been agreed upon through the preceding negotiations. The contract is a monologue by the buyer. This subjective, first person style is not without parallel in the legal traditions of the Ancient Near East. All of the Aramaic contracts found at Elephantine are cast in a similar style, as we see from the key phrase in a typical conveyance: "I give to you for my lifetime and after my death a house and land of mine."[1] This is a subjective monologue by one of the parties to the contract, but it differs significantly from the contract of Ru 4 in being a statement by the seller, not the buyer.[2] Other examples of the subjective contract style are most of the Egyptian documents,[3] and the so-called Neo-Babylonian dialogue-documents, though the latter are not, of course, monologues.[1] All of the contracts in the "subjective" category, are cast in "oral" forms, being either--as in Ru 4--a speech by one of the parties, a dictated statement--as in the Aramaic and probably the demotic texts--or a dialogue between the two parties, as in the Neo-Babylonian dialogue-documents. Though the Aramaic texts are, of course, written documents, they reflect an oral contract ceremony. One essential element of these documents is the "dictation" clause coupled with the name of the scribe: "X wrote this...at the dictation of A son of B...." This clause coupled with the subjective style of the document proves the oral background for the Aramaic texts.

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[1] Cowley, Aramaic Papyri, P 8, line 3, p. 23.

[2] In the Aramaic documents from Elephantine, "it is always the alienor who addresses the alienee. The deed is drawn up ex latere alienatoris. All of the documents here discussed are monologues: there is no indication of assent by the other party, nor any counterdeclaration." (R. Yaron, "Aramaic Deeds of Conveyence," Biblica, XLI (1960), p. 250.) Cf. also Yaron, Law of the Aramaic Papyri, pp. 124 ff., where this formulary style is understood as typical Egyptian style.

[3] Griffith, Catalogue of the Demotic Papyri in the John Rylands Library (Manchester: The University Press, 1909), Vol. III, pp. 32 ff. Cf. also Yaron, JSS, 2(1957), pp. 57 ff., for a detailed comparison of these demotic texts with the Aramaic legal papyri.

It is significant that both the subjective and the objective contract styles are represented in the Old Testament. And we can see by the variety of styles in the contracts that stylistic criteria will have to be supplemented by other tests as we try to recover the Old Testament contract forms. It will be especially difficult to distinguish objectively formulated contracts from simple narrative statements, that is, to determine whether a statement such as "A bought B from C" is a contract sentence or simply a narrative about a purchase. Often a final decision on such texts will be impossible, but when most of the characteristics of the contract forms are present, we are justified in considering these statements with the forms of the contract.

b. The Purpose of Contract Forms--But style is only the first criterion for recognizing the forms of the contract. Different aims may also be observed in the formulae. It has been shown that the function of the polite forms of the negotiations was to enable each party to make the settlement most satisfactory to himself, or at least to enable the parties to come to some settlement. The proposals and counter proposals serve the aim of coming to the terms of the sale. But the contract of sale, the deed, is formalized in order to prevent future dispute over the ownership of the property transferred. A contract of sale is the same as a receipt; it proves that the buyer has paid for the property, and that he is now the owner. So the contract is drawn up for the sake of the buyer, as a title to the property. Proof that the contract is drawn up from the perspective of the buyer is seen in the secondary clauses attached to many agreements from various periods in the history of the Near East. In these clauses the seller guarantees the buyer against withdrawal from the agreement and after-claims by the seller himself or any of his relatives. The seller usually agrees to heavy penalties if he or any of his family withdraws from the bargain. The Aramaic deeds contain the following sentence: "14 Whoever sues you in my name concerning this land, shall pay you the sum of 20 (twenty) karash royal weight, 15 at the rate of 2 R to the ten, and the land is assuredly yours, and you are quit of 16 all claim that they may bring against you in regard to this land."[1] The same purpose is reflected in the usual clause in the Akkadian deeds from Ras Shamra: "In the future, no one shall take it the land from the hands of...." (ur-ra-am še-ra-am amilu ma-am-ma-an la-a i-la-aq-qì-šu-nu iš-tu qâti^{ti}....)[1]

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[1] San Nicolo, "Zur Entwicklung der Babylonischen Urkundenformen," p. 10, and R. Yaron, JSS, 2(1957), pp. 56-57.

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[1] A. Cowley, Aramaic Papyri of the Fifth Century B. C. (Oxford: The Clarendon Press, 1923), P 2, p. 17. For a more detailed discussion of the form and function of these clauses in the Aramaic papyri, cf. R. Yaron, Law of the Aramaic Papyri, pp. 84 ff., and Biblica, XLI (1960), pp. 261 ff.

c. The Schema of the Contract--When we inquire about the contents of the contract we find Jeremiah's reference to his "deed of purchase, containing the terms and conditions." (הַמִּצְוָה וְהַחֻקִּים) (Jer 32:11) What are these terms and conditions which a contract must contain to be a contract? Some of the contracts of the Near East are long and complicated, with the specification of numerous complicated terms and detailed conditions. Most of the Aramaic deeds fall into this category. More common, however, are contracts such as the Akkadian text cited above (p. 70). The body of this document contains only two sentences. But most of the contracts of the Old Testament are even shorter: one sentence is usually sufficient. The single sentence of I Ch 21:25 contains all the elements essential to a complete contract: "So David paid (וַיִּתֵּן) Ornan six hundred shekels of gold by weight for the site."[2] Whether this brief sentence is a contract or merely a report of a contract, it contains all the necessary parts, the report of the transaction with the names of the parties, the property transferred, and the price paid.

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[1] The distinction between negotiations and contract might appear to be the difference between private and public discussion, between steps taken independently and those taken before the assembled court. It does appear logically that the negotiations need not be public and the contract or the agreement formalization must be public, but the Old Testament evidence is ambiguous at this point. We do not know whether Jeremiah's negotiations with Hanamel were public or private, but we do know that the negotiations in Gen 23 and Ru 4 were public affairs, before the assembled court. So at least in these crucial passages, the distinction between private and public discussions is useless.

[2] Cf. also II Sam 24:24b; I K 16:24; Gen 23:19; Josh 24:32.

In order to know what scheme to expect in the contracts of the Old Testament, we turn to the more fully preserved texts of the ancient world. The pattern of the Akkadian texts from Ugarit, as seen by Nougayrol and borne out by examination of the texts is:

A. "date"

B. Clause defining the type of document (Usually either "before witnesses," "before the king," or an act of the king himself.)

C. Description of the act (The body of the contract, the "operative part.")

D. Secondary Clauses (Usually concerning future non-interference.)

E. Authentication (Notation of the witnesses or of the "dynastic" confirmation.)[1]

Yaron separates the Aramaic papyri from Elephantine into two types, with some minor differences in the order and contents of the two types. He describes the schemata of Group B, the more detailed type, as follows:

1. Date: On the mth of (Babylonian month), that is the nth day of (Egyptian month), year x of Y the king,
2. Place of Execution: ...in (name of place)....
3. Parties: ...said A son of B (description) to C son of D (description) as follows:
4. Operative Part.
5. Name of Scribe: There wrote E son of F this document...
6. Dictation Clause:- ...at the dictation of A son of B.
7. Witnesses: The witnesses (are written) within: J son of K, L son of M, &etc.
8. Endorsement (on the verso): A document of (name of transaction) which A son of B wrote to C son of D.[2]

San Nicolo describes the pattern of the typical Old-Babylonian documents as follows:

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[1] Nougayrol, "Types, Matiere, et Nature des Actes Juridiques," PRU III, pp. 23-24.

[2] Yaron, Law of the Aramaic Papyri, p. 25. The differences between Groups A and B are minor. Group A omits the Babylonian date, the place of execution, a "description" of the parties, and lists the witnesses ahead of the name of the scribe instead at the end of the document proper.

1. Vertragsgegenstand.
2. Namen der Parteien.
3. Rechtsgeschäftliche Erklärung (des Käufers, Tauschenden, Ehemannes, usw.).
4. Vertragsklauseln.
5. Eid einer oder beider Parteien.
6. Zeugen und Schreiber.
7. Datum.[1]

Examples from other times and places in the Ancient Near East could be multiplied,[2] but these patterns should be sufficient to demonstrate both the variety of patterns possible as well as the basic elements which appear to be necessary in ancient--or, for that matter, modern--contracts. A contract must contain 1) The names of the buyer and seller; 2) An "operative part" which describes the transaction; 3) Specification of the property sold, usually as part of the operative part; and 4) Some verification of or attestation to the process.[3] But a contract may contain a great many more elements, and most of them do. We see from this list of essential elements, however, that no issue would be introduced into the contract which had not been raised and settled in the negotiations. The names of the buyer and seller are, of course, known in the negotiations, as well as the identity of the property which is transferred. The Operative Part is the description of the settlement which has been reached, including usually the price of the property which has been settled through the prolonged legal negotiations. The attestation--usually by witnesses--is the verification that the transfer has occurred.

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[1] M. San Nicolo, "Zur Entwicklung der Babylonischen Urkundenformen," p. 4. Cf. also Yaron, JSS, 2(1957), pp. 55-56.

[2] An Aramaic deed from the time of the Bar Chochba rebellion contains 1) Date, 2) Parties, 3) Operative part, 4) Secondary clauses guaranteeing non-intervention with the new owner, 5) Signatures of the seller and his wife, and 6) The witnesses. (Cf. S. A. Birnbaum, "The Kepher Bebhayu Conveyance," PEQ 89(1957), pp. 108-132, for text and a tentative translation.) The schema of the Egyptian contracts closely resembles the pattern of the Aramaic texts from Elephantine. They include: 1) Date, 2) Parties, 3) Operative Part, 4) Scribe, and 5) Attestation. (Cf. Yaron, JSS, 2(1957), pp. 57-58, and Griffith, Catalogue of the Demotic Papyri, Vol. III, pp. 12 ff.) Mendelsohn points out that the pattern of the Sumerian slave-sale contract was similar to the deeds of other sorts, including four, five, or six clauses: 1) Name of slave, 2) Parties, 3) Price, 4) Clause concerning revocation of the transaction, 5) Oath of the parties, and 6) Witnesses and date. (I. Mendelsohn, Slavery in the Ancient Near East, p. 34.)

[3] Cf. also de Vaux, Ancient Israel, pp. 167-8.

There are few if any complete contracts in the Old Testament, but there are many examples of the various parts of the contract scattered here and there. We should be able to identify and discuss these forms which appear, but in the absence of a fully detailed Old Testament contract, we are not able to recover the schema of the Hebrew documents. We shall discuss each of the forms which we find in what seems to be the most natural order, but our outline must necessarily be arbitrary.

1. The Operative Part

The basic element in any contract is the Operative Part, the description of the legal process in its simplest terms. It is this description which enables us to distinguish between various types of contracts. Yaron notes that the Operative Part in the Aramaic documents is the least standardized section;[1] this is because all the contracts of sale, marriage, and donations follow the same pattern except in the Operative Part. Since we are confining our discussion at this point to conveyances, there are some definite patterns discernable in the Operative Parts, both in the Old Testament and in the Aramaic texts. In the conveyances, the Operative Part may consist of either a Purchase Formula, a

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[1] Yaron, Law of the Aramaic Papyri, pp. 79-80.

Payment Formula, or both Purchase and Payment Formulae together. One of these forms is essential to the bill of sale; indeed, it is the constituent element of the contract.

a. The Purchase Formula--Probably the most common Old Testament statement of acquisition by purchase is through the verb קנה , "to buy." Only a very few of the Purchase Formulae with קנה are in the first person, subjective style. The most prominent of these is the oral contract in Ru 4:9 ff: "I have bought (קָנִיתִי) from the hand of Naomi all that belonged to Elimelech and all that belonged to Chilion and to Mahlon." And Joseph's address to the Egyptians has the ring of a formal contract sentence, in the first person, subjective style: "Then Joseph said to the people, 'Behold, I have this day bought you and your land (הֵן קָנִיתִי אֶתְכֶם הַיּוֹם וְאֶת־אַדְמַתְכֶם) for Pharoah.'" (Gen 47:23a)[1]

The third person formulations of the purchase with קנה are much more common, but as we have seen, with these texts one is always left with the unanswered question of whether the statements are actually contract sentences or simply narratives about contracts. In most cases, it appears that the sentences are at least the traces of contractual forms which have been preserved in narrative frameworks. This is the case in II Sam 24:24b: "So David bought (וַיִּקֶן) the threshing floor and the oxen for fifty shekels of silver." So also Gen 33:19a: "And from the sons of Hamor, Shechem's father, he [Jacob] bought (וַיִּקֶן) for a hundred qesitas the piece of land on which he had pitched his tent." (Cf. also Josh 24:32) Omri's purchase of the site of Samaria obeys the same pattern: "He bought (וַיִּקֶן) the hill of Samaria from Shemer for two talents of silver...." (I K 16:24a).[1]

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[1] Cf. Jer 32:9.

These objectively styled Old Testament records of purchase have parallels in many of the Akkadian documents from Ugarit. While the verb in these Akkadian texts is not directly related to קנה , the force is the same in these documents as קנה in the Hebrew texts, and, more important, the Akkadian formula parallels the Hebrew formula:

> Šarrakanu has acquired (il-te-qì), 'for the [full] price',
> 3 *ikî* of the land of Abiru,
> son of Ḫagabanu....[2]

This use of *leqūm* in the sense of "to acquire" or "to come into possession of" is seen in many other contracts from Ugarit.[3] Furthermore, there are some examples of the same terminology in the Old Testament, though the examples are not within contracts proper. We hear that the ideal wife "considers a field and buys it (וַתִּקָּחֵהוּ)...." (Prov 31:16)[4]

A few Old Testament texts indicate that the Operative Part of the Hebrew contract might have contained a Purchase Formula dealing with the seller's action rather than the buyer's action. This clause could be passive, the property *was* sold, or active, A sold his property to B. The active formula is reflected in the story of how Esau lost his birthright to Jacob: "Jacob said, 'Swear to me this day.' So he swore to him, and sold (וַיִּמְכֹּר) his birthright to Jacob.'" (Gen 25:33)[1]

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[1] Cf. also Gen 39:1; 49:30,32; 50:13; 25:10; Jer 32:15,43.

[2] *PRU* III, text 15.139, lines 4-6, pp. 166-7.

[3] *PRU* III, text 15.37, cited above, p.70 , texts 16.147; 16.174; &etc.

[4] Cf. also especially Job 40:28 (Eng 41:4): "Will he [Leviathan] make a covenant with you/to take him (תִּקָּחֶנּוּ) for your servant for ever?" The same idiom is found in II K 4:1. לקח means "to adopt" in Est 2:7, and "to take (as) a wife" in Gen 4:19 and Ex 32:16.

Virtually all of the Aramaic conveyances from Elephantine are formulated from the perspective of the vendor's action.[2] The typical clause from the documents says: "I give you the house...."[3] (יהבת לכי לביתא) We also find the similar expression, "We have sold and given (over) to you the house...." (אנחן זבן ויהבן לך)[4] These are first person expressions by the vendor himself. Yaron points out that the verb יהבת, "I have given," is to be understood in these contexts in a technical sense. "It refers not so much to the physical act of giving, as to the transfer of ownership to the alienee."[5] Since the expression may occur in deeds of sale, gift, or barter, the nature of the "giving" is sometimes further specified as "for its price," "in affection," or the like.[6]

Similar Purchase Formulae are found in the so-called "sale adoption" texts from Nuzi: "The tablet of adoption belonging to Kuzu, the son of Karmishe: he adopted Tehip-tilla, the son of Puhi-shenni. As his share (of the estate) Kuzu gave (iddin(in)) Tehip-tilla 40 imers of land in the district of Iphushshi."[1] And the most common clause in the Operative Parts of the Akkadian conveyances from Ugarit is a similar third person description of the seller's action:

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[1] Cf. also Gen 37:28; 45:4-5; Is 50:1; Ps 44:13 (Eng 12). Psalm 104:17 is passive.

[2] They are drawn up ex latere alienatoris, cf. Yaron, Law of the Aramaic Papyri, pp. 79-80.

[3] Cowley, Aramaic Papyri, P 13: 2,4,5; P8: 3,8; &etc.

[4] Emil G. Kraeling, The Brooklyn Museum Aramaic Papyri (New Haven: The Yale University Press, 1953), P 3, line 3, cf. also line 5.

[5] Yaron, Law of the Aramaic Papyri, p. 80.

[6] Ibid., pp. 80-81, and Yaron, Biblica, XLI (1960), p. 255.

> Lady Bat-rabi
> 5 and Šubammu, son of Lady Layawa(?),
> have produced their 20 ikî of land,
> situated in Ṭibaqu and they have sold it ù it-ta-[din-]nu-šu-n[u]
> to Lady Talaya, daughter of ...[2]

The clause which seems to be the Operative Part of the contract reported in Gen 23 fits none of the patterns which we have observed among the Purchase Formulae of the Old Testament and the extra-biblical contracts. But the expression used there, the qal of קום followed by ל, "to belong to" (cf. KB, p. 832) is clearly a formal expression of ownership transfer. The interpretation of the phrase is relatively simple in Lev 25:30 and 27:19. In the former it means "belongs in perpetuity to" (וְקָם...ל... לְדֹרֹתָיו), while in the latter it signifies "belong to him," or "remains his" (וְקָם לוֹ). But the expression in Gen 23:17,20 is more difficult. While the phrase also signifies here "belong to," it is clear that the reference is to the act of transfer, since we hear that the field וַיָּקָם לְאַבְרָהָם..."in the presence of the Hittites," (vs. 17) and ...וַיָּקָם לְאַבְרָהָם "for a burying place from the Hittites." (vs. 20) In an effort to retain both the connotation of "to belong to" as well as that of the act of transfer itself, we translate: "So the field...went over to Abraham."[1]

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[1] E. Chiera, Joint Expedition with the Iraq Museum at Nuzi (Paris: P. Geuthner, 1927), No. 1. Translated by Chiera and Speiser, "Selected 'Kirkuk' Documents," JAOS, xlvii (1927); cf. also ANET, T.H. Meek, p. 219.

It has been almost universally accepted that the "sale-adoption" contracts from Nuzi record what is in fact sales of real estate by way of a legal fiction, probably to avoid violation of a law against outright sale. Cf. Steele, Nuzi Real Estate Transactions (New Haven: American Oriental Society, 1943), for a full discussion of this thesis.

[2] PRU III, text 16.156, p. 61. Cf. also 16.207, line 5; 16.277, line 4; &etc.

b. The Payment Formula--As we have noted in another connection,[2] the verb נתן often means "to pay," as well as "to give." Consequently, this verb may be employed in the Payment Formulae of the contract: "So David paid (וַיִּתֵּן) Ornan six hundred shekels of gold by weight for the site." (I Ch 21:25)[3] Similar Payment Formulae are used in some of the Akkadian contracts from Ugarit. A contract recording the sale of a horse includes *both* Payment and Purchase Formulae constructed with the verb *nadânum*:

> Pillaza,
> Grand riding master
> of the king of Carchemish,
> has given (it-ta-din) a horse
> to the king, and the king
> 200 (shekels of) silver has given (2 me-at kaspa it-ta-d[in])[4]

This contract preserves the fiction that each of the parties is giving the other a gift, but the economic aspects of the transfer are obvious, both in the reciprocal nature of the gifts as well as the fact that a contract was drawn up to record the transfer.

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[1] In an obvious effort to retain both connotations of the expression, the *RSV* translates: "So the field was made over to Abraham...." The difficulty is that this translates an intransitive verb as a passive.

[2] Cf. above, pp. 31 ff.

[3] Cf. also Ju 16:5; Gen 47:17; I K 5:25 (Eng 11); &etc.

[4] *PRU* III, text 16.180, lines 2-7. Cf. also *PRU* III, text 16.140, lines 5-10.

Such combinations of Purchase and Payment Formulae are also found in some of the Aramaic conveyances: "We have sold it (זבנהי לך) to thee and thou didst give to us (ויהבת לן) its value in money, 1 karsh, 4 shekels, in royal weight, silver 2 R. to the karsh...."[1] The Aramaic verb יהב is, of course, the synonym of Hebrew נתן and Akkadian *nadânum*.

But a more common formulation of the Payment Formula is with the verb שקל , "to weigh out." Abraham and Ephron agreed upon the price for the plot of land and the cave, "And Abraham weighed out (וַיִּשְׁקֹל) for Ephron the silver which he had named in the hearing of the Hittites, four hundred shekels of silver...." (Gen 23:16) Jeremiah also relates: "And I bought the field at Anathoth from Hanamel my cousin, and weighed out (וַאֶשְׁקְלָה) the money to him, seventeen shekels of silver." (Jer 32:9)[2] We can be certain that this formula was used in contracts, for many Ancient Near Eastern documents contain such a clause in the Operative Part. A contract recording the sale of a slave follows the Purchase Formula with these words: "As her full price he weighed out (Šam. Til . La . Bi . Šú) 5/6 mina 1 shekel of silver and he also delivered (iš-ku-un) 2/3 shekel of silver as additional payment."[3] San Nicolo notes that the middle point of the documentation of the sale in the Old Babylonian contracts consists of the statements that "der Käufer vom Verkäufer gekauft hat" and that "er den vollen Preis gezählt hat."[1] Here is another version of the Purchase Formula and the Payment Formula combined.

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[1] Kraeling, *Aramaic Papyri*, P 3, lines 5b-6a. Cf. also Kraeling, P 12, lines 3-6a.

[2] Cf. also Ex 22:16 (of the *mohar*); II Sam 18:12; I K 20:39; Is 55:2; Zech 11:12; Job 28:15; Ezr 8:25 ff.; and Est 3:9.

[3] M. Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts* (Leipzig: J. C. Hinrichs'sche Buchhandlung, 1913), text no. 84, pp. 128-9, translated by Meek, *ANET*, pp. 218-9. The "additional payment" which is spoken of here is a gift to close the bargain. Johns interprets this small payment, or "earnest money," as a good-will offering given to the seller. (Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, p. 230.) No Old Testament parallels to this second payment have been uncovered through this study.

We should pause at this point to examine some of the procedures of the transaction as they are revealed by the formulae in the Operative Part of the contract. The very specific description of the payment of money in Jer 32:10 shows that the idiom "to weigh out money" actually describes the way payment is made: Jeremiah says he signed and sealed the deed, got witnesses, "and weighed the money on scales." (וָאֶשְׁקֹל הַכֶּסֶף בְּמֹאזְנָיִם׃) The phrase "to weigh out" has then very naturally become an idiom for payment because of the way payment was made. One can see from the fact that the money had to be weighed out that it was not minted or standardized in the modern sense of the word.[2] The use of scales in buying and selling is also reflected in the numerous Old Testament prohibitions and injunctions against dishonest scales and weights: "You shall not have in your bag two kinds of weights, a large and a small." (Dt 25:13, cf. also 14-15)[3]

We see also from some of the clauses in the Payment Formulae that more than one standard of measurement might prevail, perhaps even in the same period. Abraham pays Ephron four hundred shekels of silver, "according to the weights current (עֹבֵר לַסֹּחֵר׃) among the merchants." (Gen 23:16b)[1] And David's payment for the threshing floor of Araunah is six hundred shekels of gold "by weight" (מִשְׁקָל) (I Ch 21:25). Another, more specific standard of measurement mentioned in the Old Testament is "the shekel of the sanctuary" (שֶׁקֶל הַקֹּדֶשׁ), mentioned many times as the standard of measurement to be used for gifts to the sanctuary.[2]

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[1] M. San Nicolo, Die Schlussklauseln der altbabylonischen Kauf- und Tauschverträge (München: Oskar Beck, 1922), p. 15.

[2] Cf. W. Rudolph, Jeremiah, Handbuch zum Alten Testament, 12 (Tübingen: J. C. B. Mohr (Paul Siebeck), 1947), p. 177, and Gunkel, Genesis, p. 244.

[3] Cf. also Prov 11:1; 20:11; 16:11; Am 8:5; Hos 12:7.

The Code of Hammurapi mentions that money is received "by the large weight,"[3] which indicates that more than one "weight" was at least a possibility. In the Aramaic papyri the specific standard of measurement usually is given with the price paid for each piece of property. The sale of a house is recorded: "We have sold it to thee and thou didst give to us its value in money, 1 karsh, 4 shekels, in royal weight, silver 2 R. to the karsh...."[4] (באבני מלכא כסף ר1ו לכרש 1) That more than one standard prevailed at the same time in Elephantine is seen in Kraeling, Aramaic Papyri, P 12, line 5: "and thou didst give to us the price of our house in money, one karsh, that is 1, three shekels, that is 3, in money of Yawan 6 staters (and) 1 shekel, (that is) one...."

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[1] This reference to the standard used among the merchants does not prove that Abraham was a merchant, as Gordon maintains, JNES 17 (1958), p. 29. There are no indications in Genesis at all that tradition considered Abraham a merchant.

[2] Ex 30:13, 24; 38:24-26; Lev 5:15; 27:3,25; Nu 3:47,50,&etc. The "shekel of the sanctuary" is specified as weighing "twenty gerahs" (Ex 30:13; Lev 27:25; &etc.), and is the standard for grain and other produce as well as money.

[3] No. 108, cf. Meek, ANET, p. 170.

[4] Kraeling, Aramaic Papyri, P 3, lines 5b-6a. Cf. also Kraeling P 3, lines 15-16,18; P 4, lines 15,21-22; P 7, lines 31-32; P 8, lines 7-8.

The scribe gives the usual standard, and then states the Greek equivalent.[1]

We return to our consideration of the Payment Formulae. In addition to stating that money was paid or weighed out and giving the official standard applied to the price, most Payment Formulae also state the specific price paid in the transfer. Jeremiah paid seventeen shekels of silver for the field at Anathoth (Jer 32:9), and Abraham paid 400 shekels of silver for the plot at Machpelah (Gen 23:16). According to II Sam 24:24, David paid 50 shekels of silver for the threshing floor and the oxen, but according to I Ch 21:25, the price was six hundred shekels of gold. Amounts of payment are given in talents,[2] shekels,[3] "qesitas,"[4] or simply שִׁבְעִים כֶּסֶף , "seventy (pieces) of silver." (Ju 9:4)[5] This last idiom is analogous to the statement of price in many of the Akkadian texts from Ras Shamra: i-na X kaspi, "for X (shekels) of silver." In both cases the formula "X shekels of silver" has been abbreviated to "X of silver." In the real estate sales of the Old Testament, we have no way of knowing whether a particular purchase price was high or low, for we know neither the size of the land transferred nor the customary purchasing power of the money.[6]

To summarize. The Operative Part of the contract is structured around a verb indicating purchase--usually קנה --or payment--usually שׁקל or נתן. This essential element of the contract invariably includes the names of the parties and the description of the property transferred, and usually includes also the specific price paid. In the Purchase Formula, the subject is ordinarily the seller, the object is the property, and the indirect object the buyer: A (seller) sold X (property) to B (buyer). In the Payment Formula, the subject is the buyer, the object is the price paid, and the indirect object is the seller; a prepositional phrase gives the identity of the property sold: B (buyer) paid Y (price) to A (seller) for X (property). But these are only the more common formulations found. As the discussion revealed, there are many variations; especially important are the subjectively formulated Operative Parts found in oral contracts (Ru 4; Gen 47:23). We have studied the verbal expressions which form the heart of the Operative Part; we turn now to the other elements in the Operative Part, the Property Specifications and the Parties.

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[1] Kraeling, Aramaic Papyri, pp. 269, 275-6.

[2] I K 16:24; II K 15:19; 18:14; II Ch 25:6; 27:5; Est 3:9.

[3] Gen 37:28; II K 15:20; Hos 3:2.

[4] Gen 33:19; Josh 24:32.

[5] Cf. also Ju 16:5.

[6] Cf. Rudolph, Jeremiah, p. 177.

2. Property Specifications

One of the essential elements of any bill of sale--and therefore of the purchase contracts of the Old Testament--is a description of the property which is changing hands. While we intend to show that the property description is an element of the contract itself, the specifications of the property must be discussed, and therefore the property described, during the negotiations which precede the fixing of the contract. This is only to point out with regard to this particular form what we have seen to be true about the contract in general, namely, that the contract is but the summary of the results of the negotiations, and that nothing new is introduced into the contract which has not been raised and settled in the negotiations (cf. above, pp.77-8). Abraham says first to the Hittites that he wants to buy "property" (אֲחֻזַּת־קֶבֶר) among them for a burying place. (Gen 23:4) His next step is to specify the desired property further: He wants to buy "the cave of Machpelah, which he [Ephron the son of Zohar] owns; it is at the end of his field." (Gen 23:9) Ephron himself further refines the specification of property, in effect describing the real estate which eventually changes hands, when he offers to give the field as well as the cave which is in it. (vs. 11)[1]

But these negotiations are recapitulated in the contract with greater precision in the formal Property Specification: "So the field of Ephron in Machpelah, which was to the east of Mamre, the field with the cave which was in it and all the trees that were in the field, throughout its whole area...." (Gen 23:17) The style of this description of the field is the third person narrative which we have found to be the style for this particular contract.[2] But the syntax of this contract sentence is somewhat unusual in its long string of relative clauses and the setting of הַשָּׂדֶה in apposition to שְׂדֵה עֶפְרוֹן.

The place of the Property Specifications varies with the contracts of the Ancient Near East, but in most of them, including those of the Old Testament, these specifications are part of the Operative Part of the agreement.

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[1] Cf. above, pp.58ff., where we have seen that the seller may include in the sale more than the buyer had originally asked to buy.

[2] Cf. above, p. 71.

What facts about the property are considered important enough to be recorded in the deed? In the first place, the property is identified by the name of the landlord; it is the field of Ephron (שְׂדֵה עֶפְרוֹן). The Priestly Writer continues to call the field by the name of Ephron even after it has been sold to Abraham and become the burial ground for him and his descendents. (Gen 25:9; 49:29) Secondly, the location of the field is given: "in Machpelah, which was to the east of Mamre." (vs. 17) Mamre is further identified as Hebron, "in the land of Canaan," (vs. 19) but this verse is not part of the contract proper. We should point out that the property is localized in the broadest terms; these directions are given for persons who already know where "the field of Ephron" lies. The third part of the description of the field is more helpful to the stranger: the landmarks are noted. Most important and distinctive of these landmarks is the cave, later called "the cave of Machpelah" (Gen 25:9) But the other landmarks are noted as well: "all the trees that were in the field, throughout its whole area...." (vs. 17) (וְכָל־הָעֵץ אֲשֶׁר בַּשָּׂדֶה אֲשֶׁר בְּכָל־גְּבֻלוֹ סָבִיב׃) This listing of the landmarks of the property serves a double purpose, that of identifying the field by describing its salient features, but also--more important--that of listing the full extent of the purchase. The Property Specifications are then contributing to the main purpose of the contract, the assurance of ownership to the buyer and thus the prevention of future strife about the property.[1] That strife over such issues was possible in ancient Israel is seen in the prohibitions against moving landmarks, and the judgment pronounced upon those who do such things.[2]

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[1] Cf. above, p. 74. Boecker notes that the trees must be named in the agreement in order to avoid future strife over them. (*Redeformen*, p. 168.)

But if we were expecting to find a full property description in the Hebrew contracts, we notice that several very important items have not been mentioned in the specification of the real estate in Gen 23. We have already noted that the location of the field is given only in a very general manner. The location of the property in relation to neighboring tracts, its distance from the city of Hebron, and its more precise direction from the city are not given. One who did not already know where to find "the field of Ephron" could not find it from the description in this contract. Neither are we told the size of the field; not even its approximate size is given. Furthermore, the boundaries of the tract are not described at all. Should we expect to find a more detailed description of the piece of land, or can a contract be complete with the simple description given here? Let us examine the other Old Testament Property Specifications to see if Gen 23:17 conveys to us the complete formula.

In virtually all of the contract sentences in the Old Testament there is some reference to the property which is exchanged. There are some full, detailed descriptions of the property, but the essential element appears to be the identification of the property by the name of the landlord. It even appears that this criterion may be applied to help us distinguish between firmly stamped contract sentences and loosely formulated narratives about contracts, though such narratives may contain some of the elements of the contract. In the reference to Omri's purchase of

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[1] Dt 19:14; Is 10:13; Hos 5:10.

the site of his capital city, for example, the property is identified by its later name: "He bought the hill of Samaria from Shemer for two talents of silver; and he fortified the hill, and called the name of the city which he built, Samaria, after the name of Shemer, the owner of the hill." (I K 16:24) The proper contractual description would have been הַר שֶׁמֶר rather than הָהָר שֹׁמְרוֹן. The reference to Jacob's purchase of land near Shechem is also loosely formulated: "And from the sons of Hamor, Shechem's father, he bought for a hundred qesitas the piece of land on which he had pitched his tent." (Gen 33:19; cf. also Jos 24:32) And the contract sentence referring to David's purchase of the threshing floor of Araunah gives the briefest mention of the goods exchanged: "So David bought the threshing floor and the oxen for fifty shekels of silver." (II Sam 24:24b) The other account is even more concise: "So David paid Ornan six hundred shekels of gold by weight for the site (בַּמָּקוֹם)." (II Ch 21:25)

In Ru 4:9-10, the Operative Part is expressed in the first person, but here too there is specification of the property which is exchanged. "Then Boaz said to the elders and all the people, 'You are witnesses this day that I have bought from the hand of Naomi all that belonged to Elimelech and all that belonged to Chilion and to Mahlon. 10 Also Ruth the Moabitess, the widow of Mahlon, I have bought to be my wife...." (Ru 4:9-10a) This is the most inclusive, if not the most precise, Property Specification we have in the Old Testament contract sentences. But the Property Specification which most closely resembles that of Gen 23:17 is not found in a contract proper, but in the context of a Purchase Request. Hanamel asks Jeremiah to buy his field: "Buy my field which is at Anathoth in the land of Benjamin...." (Jer 32:8) Here, as in Gen 23:17, the land is identified by the name of the owner ("my field," says Hanamel), and by its general location ("Anathoth in the land of Benjamin").[1]

These Old Testament Property Specifications with their very brief notation of the items which change hands stand in sharp contrast to the Aramaic bills of sale found at Elephantine. The Elephantine Aramaic documents include some of the most detailed contracts of the Semitic speaking ancient world. A contract registering the sale of a house contains the following description of the property:

> We have sold and given (over)
> 4 to thee the house of *ʿpwly* son of Misdai which is in Yeb the fortress (and) the walls of which are standing (?) and a court
> 5 is below, and it is not built (upon), and the windows are in it, and beams it does not have.
> ....
> 7 And behold, these are the boundaries of that house which we sold to thee: Above it
> 8 is the house of Satibar; below it is the *tmy* of Khnum the god, and the street of the king is between them;
> 9 east of it the treasury of the king adjoins it; on the west of it is the Temple
> 10 of Yahu the god, and the street of the king is between them.[2]

This lengthy and detailed description of the house not only names the property by the name of the landlord ("the house of *ʿpwly* son of Misdai"), but also describes the house and grounds and even gives in meticulous detail the boundaries of the land. Such minutae are not the exception in the Aramaic contracts of transfer, but are the rule.[1] The description of the property conveyed usually includes either a) measurements and boundaries, or b) boundaries only,[2] though some documents give further details about the property. Typical of the documents which give, in addition to a description of the land and the listing of its boundaries, the measurements of the land, is the following statement from a document recording the gift of land by a man to his daughter:

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[1] We should also at least point out here the several references to the contract sentence of Gen 23:17, which references also give the Property Specifications in various forms: Gen 25:9-10; 49:30,31,32; 50:13.

[2] Kraeling, *Aramaic Papyri*, P 3, pp. 154-5. This translation is Kraeling's.

> 3b "I give to you for my lifetime and after my death a house and land of mine. 4 Its measurement is: its length from the lower to the upper end 13 cubits and 1 handbreadth; width from east 5 to west 11 cubits by the measuring-rod; its boundaries, at the upper end of it the house of Dargman b. Ḥarshin 6 adjoins it; at the lower end of it the house of Espemet b. Pfṭ'onith 8 boatman of the cataract.[3]

These complex, detailed specifications of the property conveyed --even when the property is a very small tract of land--raise again our question about the Old Testament Property Specifications: Do the Hebrew sentences contain all that is necessary in a contractual description of land transfer, or do we merely have abbreviated formulae in the Hebrew sentences? Should we expect Hebrew contracts to contain the detail which we find in the Aramaic papyri? Before we answer this question, let us examine some more Property Specifications in yet another set of ancient

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[1] For similar descriptions, cf. also Kraeling, Aramaic Papyri, P 4, lines 3-12, pp. 168-9; P 6, lines 3-8, pp. 192-3; P 10, lines 2-7, pp. 248-9. Cf. also in Cowley, Aramaic Papyri, P 6, lines 7-11, pp. 16-17; and P 13, lines 13-15, p. 38.

[2] Yaron, Biblica, XLI (1960), pp. 252-3. Cf. Yaron, Law of the Aramaic Papyri, pp. 79-80, for a detailed discussion of the Property Specifications in the Aramaic Papyri.

[3] Cowley, Aramaic Papyri, P 8, p. 23. For similar formulations cf. also Kraeling, Aramaic Papyri, P 9, lines 3-16, pp. 236-7; P 12, lines 3-17, pp. 270-1.

Semitic documents.

The Akkadian tablets found at Ras Shamra are mainly classified as "judicial texts," contracts, agreements, and legal decisions. Though there is some variety in the specification of property conveyed, the following texts are typical of the simplest formulation.

> Ariradu, son of Abdinergal,
> has acquired the land
> of Gallanu son of Šapḫalanu[1]

****

> Yayanu, son of Šu-[...
> has produced his house [...
> secondly (?), his house [...
> and he has ceded [them]
> to Šait[tenu,][2]

As we can see from these examples, the specification of the property is as brief as many of the Old Testament sentences. Commonly, the land is simply identified by the name of the landlord,[3] as we have seen also in the Old Testament and the Aramaic Property Specifications. But it is not uncommon for other features to be added, especially, as in the specifications in Gen 23:17 and Jer 32:8, the general location of the land in the territory of such and such a town or region.[4] Also, the land may be classified or identified in terms of type, that is, whether it is cultivated, farm land, vineyard, or the site of a house.[5] It is not unusual to find in a contract recording the transfer of an entire estate the formula *qa-du gáb-bi mi-im-mi-šu*, "with all (other) things," to guard against any omission in the bill of sale.[1] So we see that ordinarily the land is identified only by the names of its inhabitants and neighbors, but it does happen--and especially when only part of a plot is transferred--that the size of the tract (*nombre de ses arpents*) is indicated.[2] This excerpt from a purchase contract shows the formulation giving the size of the tract which changes hands:

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[1] PRU III, text 16.147, p. 90.

[2] PRU III, text 16.207, p. 109.

[3] Cf. also J. Nougayrol, "Types, Matière, et Nature des Actes Juridiques," PRU III, p. 25.

[4] Ibid., p. 25.

[5] Ibid., pp. 25 ff.

> Šarrakanu has acquired, 'for the [full] price',
> 5 3 ikî of the land of Abiru, (3 ikî eqlâti^{M}ša ^{l} a-bir$_x$-pí-i)
> son of Ḫagabanu, situated in the territory of Labnu,
> and 1½ ikî of the land of Abdianati, son of Gimillum,
> situated in the territory of Labnu,
> and 1½ ikî of land, of Šumanati,
> son of Ḫagabanu, situated in the territory of Labnu,
> with their 'castles'
> with their olive-orchards,
> with their vineyards.[3]

The conclusions to be drawn from these Akkadian documents found at Ras Shamra are very helpful in evaluating the Property Specifications in the Old Testament contracts. In spite of the fact that the Akkadian documents of Ugarit comprise a more or less homogenous body of material spanning a relatively short period, there is a great diversity in the formulations which describe the property transferred. But through this diversity the one consistent note we hear is the same one which we heard in the Old Testament and in the Aramaic documents from Elephantine: The property is almost invariably identified by the name of the landlord.

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[1] *Ibid.*, pp. 25,26. For the use of this formula, cf. *PRU* III, text 16.262, p. 67, and text 16.141, p. 60.

[2] *Ibid.*, p. 26.

[3] *PRU* III, text 15.139, p. 167. Cf. also *PRU* III, text 15.182, p. 35.

Furthermore, as in the Old Testament contracts, the Akkadian contracts very often identify the property *only* by the name of the owner.[1]

The same diversity and the same consistent note is seen in Akkadian documents from other periods and other localities. The property is usually identified by the name of the owner; in many cases the neighbors are set down, the borders of the property described and in some cases the size of the plot is noted.[2] But there are contracts in which the name of the landlord is considered sufficient identification. Such is the case in a bill of sale transcribed and translated (into German) by Peiser:

> 1 mina 52½ shekels of gold,
> the balance of the purchase price for the house
> of Iḳi-ša-aplu, son of Šum-iddinna, son
> of the goldsmith.[3]

The conclusion, then, for the Old Testament Property Specifications is inescapable: An exact, unambiguous description of the property transferred is an essential element in the contracts. Such an unambiguous description may include a great many details about the property, but the one element which it must contain is the *name of the owner*. Furthermore, in many cases simple identification of the land by the name of the owner is a complete, unambiguous specification of the property, ruling further description superfluous. Contracts could, however, include such details as the distinctive landmarks of the tract (as in Gen 23:17) in order to avoid any doubt about the identity or the extent of the land transferred.

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[1] Cf. *PRU* III, text 16.147, 16.207 (discussed above, p. 95), 15.37, 16.277, and 16.174.

[2] Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, p. 228.

[3] F. E. Peiser, *Babylonische Verträge des Berliner Museum* (Berlin: Wolf Peiser Verlag, 1890), text xxiv, pp. 40-41. Cf. text xciv, pp. 130-133, lines 1-9 for a detailed description of boundaries in an Akkadian text comparable to that in many of the Aramaic conveyances from Elephantine.

3. The Parties

How are the parties in the Old Testament contracts identified? Are there technical terms which are used to identify the participants in a transaction, and are these technical terms used in the contracts themselves? We find in the Old Testament a variety of terms which must be understood as signifying--more or less technically--either the professions or the functions of buyer and seller. The question to be raised at this point is how these terms are to be understood in relationship to the Israelite legal transactions and, more specifically to the Hebrew contract forms. The terms which are more closely related to the transactions and bills of sale are קוֹנֶה, "buyer"[1] (Qal participle of קנה), and מוֹכֵר, "seller"[2] (Qal participle of מכר). Some of the other terms which signify the professions of "Merchant" and "trader" are סוֹחֵר (Ez 27:

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[1] Cf. Is 24:2; Ez 7:12; Prov 20:14.

[2] Cf. Is 24:2; Ez 7:12-13; Neh 13:20. The Hebrew root מכר is usually understood as related to the Akkadian *tamkarum* (cf. *KB*), but *tamkarum* has a much more restricted meaning than מוֹכֵר. The *tamkarum* was a trader of a particular type, the official who was responsible for foreign commerce. (On the form *tamkarum*, cf. von Soden, *Grundriss der Akkadischen Grammatik* (Rome: Pontificum Institutum, 1952), paragraph 56 k, p. 67.) מוֹכֵר signifies simply "one who sells."

3-36; Prov 31:14), רוֹכֵל (Ez 27:3-36; Song of S 3:6; I K 10:15), and כְּנַעֲנִים (Hos 12:8; Job 40:30; Zech 14:21). But neither these professional titles nor the broader designations of buyer and seller can be found in Old Testament contracts or negotiations. However, the persons who participated in the negotiations may have been legally identified by some titles such as קונה and מוכר .

What one does find in the contracts of the Ancient Near East, including the contract sentences of the Old Testament, are the names of the buyer and the seller. No bill of sale is such without the names of the parties to the sale, for they are essential to the function of the contract, that is, assuring ownership to the buyer.[1] While the notation of the names of the contracting parties is essential, it may be concise, giving the names and no further identification. This is the case in most of the Old Testament contractual statements, as in Gen 23:16: "And Abraham weighed out for Ephron the silver which he had named...." I Ch 21:25 shows this pattern: "So David paid Ornan six hundred shekels of gold by weight for the site." As a rule, the Akkadian contracts give more elaborate identifications, but some of them note only the names of the parties: "Puluzinu has acquired a vineyard from Aḫliyanu...."[2]

Many of the Old Testament contract sentences are abbreviated, not being complete contracts, and give only the name of one of the parties, referring to the other with a pronoun, whose antecedent is found in the accompanying narrative: "He [Omri] bought the hill of Samaria for two talents of silver...." (I K 16:24) This is further confirmation of our impression from the Property Specifications that this passage is a narrative about a contract, formulated loosely.

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[1] De Vaux observes that the contract must include the names of the contracting parties, Ancient Israel, p. 168.

[2] PRU III, text 15.37, lines 3-5, p. 35. For a complete transliteration and translation of this text, cf. above, p. 70 .

The rule in the Akkadian contracts is to identify the parties by name and genealogy; usually the name of the father is considered sufficient, but the name of the grandfather or the clan father may be given.[1] Most of the Akkadian contracts from Ugarit note the fathers of the contracting parties:

> Nuriyanu, of Laiya, son of Namaliḫu,
> the land of Abdinikal, son of Ananiya[2]

This pattern is also used in the so-called "sale adoption" documents from Nuzi.[3] A typical contract begins: "The tablet of adoption belonging to Kuzu, the son of Karmishe: he adopted Tehip-tilla, the son of Puhi-shenni."[4] A few of the Old Testament references to transactions show traces of the identification of legal parties according to lineage: "And from the sons of Hamor, Shechem's father, he [Jacob] bought for a hundred qesitas the piece of land on which he had pitched his tent." (Gen 33:19a) And Jeremiah is to buy the field from "Hanamel the son of Shallum your uncle...." (Jer 32:7a)

The parties to a contract may also be identified by office or rank. We hear from Ras Shamra that a house has been bought by Šaittenu, identified as $^{\text{amil}}$rābisi, "the superintendent" (?).[1] The most detailed descriptions of the legal parties are to be found in the Aramiac contracts, which give not only the lineage, but also the office of the buyer and seller. One example will suffice: "said Dargman b. Ḥarshin the Khorasmian, whose station is fixed in Yeb the fortress, of the detachment of Artabanu, to Mahseiah b. Yedoniah a Jew who (lives) in the fortress of Yeb...."[2] The names of the parties are also noted in the "endorsement" which is written on the outside of the rolled and sealed document. The endorsement usually gives a general idea of the contents of the document, for example, "document of a house which A son of B wrote to C son of D."[3]

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[1] Johns, Babylonian and Assyrian Laws, Contracts, and Letters, p. 228.

[2] PRU III, text 16.140, lines 4-5, p. 45. Cf. also PRU III texts 15.182, 16.156, and 16.207.

[3] Cf. Steele, Nuzi Real Estate Transactions, and above, p. 82.

[4] T. H. Meek, ANET, p. 219, text published by E. Chiera, Joint Expedition with the Iraq Museum at Nuzi (1927), No. 1.

These texts bear out our conclusions for the Old Testament contracts. The names of the buyer and seller are constituent elements of the contract. There are no contracts which identify the parties by any technical term referring to their office or function, such as "buyer" and "seller." Though the parties may be identified further, especially as to lineage, their names alone are sufficient.

Excursus: Signing and Sealing Written Contracts

The passage in Jer 32 concerning Jeremiah's purchase of the field at Anathoth raises some special problems with respect to the names of the buyer and seller in the deed of transfer. In this our only Old Testament reference to a written deed, Jeremiah reports: "I signed (וָאֶכְתֹּב) the deed (בַּסֵּפֶר), sealed it, (וָאֶחְתֹּם) got witnesses, and weighed the money on scales." (Jer 32:10) In order to understand what has transpired in this transfer of land, we must inquire into the nature of this document. Our first clue comes from the next verse: "Then I took the sealed deed of purchase (אֶת־סֵפֶר הַמִּקְנָה אֶת־הֶחָתוּם), containing the terms and conditions (הַמִּצְוָה וְהַחֻקִּים), and the open copy (וְאֶת־הַגָּלוּי:)...." (Jer 32:11) So we know that the deed was written in duplicate, in some kind of double document. When the excavations of Mesopotamia began to uncover deeds and contracts made by writing the contract on a clay tablet, then covering that table with an "envelope" and repeating the contract on the outside, scholars were inclined to interpret Jeremiah's deed as just such a clay document.[1] But later discoveries have revealed a type of document which corresponds more closely to the description in Jer 32. There have been found in Egypt and Palestine many examples of a "double-document" which seems to be the kind of document which Jeremiah signed. These texts, dating from the Hellenistic period onwards, have written on the same sheet of papyrus two copies of a contract. "The first copy was rolled up and sealed, the other rolled up but not sealed: this is the 'open' copy of which Jeremiah speaks. It could be consulted at will but was liable to be falsified; if a dispute arose the sealed copy was opened."[2]

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[1] PRU III, text 16.207, lines 6-7, p. 109.

[2] Cowley, Aramaic Papyri, P. 6, lines 2-3, p. 16. In Yaron's categories, the contracts in Group B include some description of the parties further than their parentage, while those of Group A simply say "A son of B, C son of D." (Law of the Aramaic Papyri, pp. 9, 10.)

[3] Yaron, Law of the Aramaic Papyri, p. 23.

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[1] Cf. Cowley, Aramaic Papyri, p. xxix.

[2] de Vaux, Ancient Israel, p. 168. One of the earliest--and still one of the most complete and best documented--discussions of this interpretation of Jer 32 in the light of the papyri double documents is Fischer's article, "Die Urkunden in Jer 32:11-14 nach den Ausgrabungen und dem Talmud," ZAW, XXX (1910), pp. 136-142. Cf. also Rudolph, Jeremiah, p. 177; Deissman, Licht vom Osten (Tübingen: J.C.B. Mohr, 1923), pp. 25 ff.; F. Horst, "Das Eigentum nach dem Alten Testament," pp. 209-210.

The signing (כתב) of the contract by Jeremiah is not the same as the notation of the names of the buyer or seller which we have been considering in this section. The contract would still have to include a sentence, as part of the "terms and conditions" (הַמִּצְוָה וְהַחֻקִּים , Jer 32:11), to the effect that "Jeremiah has bought the field at Anathoth from Hanamel, the son of his uncle Shallum." The signing of this document is most likely the equivalent of the affixing of the personal seals of the parties to the clay documents (cuneiform "signatures" are hardly distinctive). In the Aramaic papyri from Elephantine, it was not the rule for the parties to sign the document, though there is one exception. In Cowley, Aramaic Papyri, P 13, the vendor has signed his name immediately before the list of witnesses. But in a Judean deed dating from c. 134 A. D., found at Wadi Murabba'at, both the vendor and his wife sign a deed of transfer.[1]

The sealing (חתם) of the deed, on the other hand, was the placing of the seal impression on the bound or closed document. The sealing of the deed in Jer 32 probably corresponds closely to what we see in the Brooklyn Museum Aramaic Papyri, many of which were recovered rolled, the seals still intact. The rolls were originally bound with cord and sealed with mud, which was impressed with a seal. Five of the rolls preserved clear impressions of the seals.[1] (The use of personal seals on the cuneiform contracts fulfills both the Hebrew functions of "signing and sealing.") Other Old Testament references to sealing documents tends to confirm our interpretation of Jer 32 in the light of the Aramaic papyri. A particularly close parallel, in spite of the fact that it does not deal with a contract, is Is 8:16: "Bind up (צוֹר) the testimony, seal (חֲתוֹם) the teaching among my disciples."[2]

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[1] Yaron, JSS, II (1957), p. 60. Cf. especially S. A. Birnbaum, "The Kepher Bebhayu Conveyance," PEQ, 89 (1957), pp. 108-132, and Koopmans, J. J. Aramäische Chrestomathie (Leiden: Nederlands Instituut Voor Het Nabije Oosten, 1962); Rabinowitz, J. J. "Some Notes on an Aramaic Deed of Sale from the Judean Desert," Biblica 39 (1958), pp. 486 ff.; Milik, J. T. "Deux documents inédits du Désert de Juda," Biblica 38 (1957), pp. 245-68.

4. "For the Full Price"

A phrase which occurs only three times (Gen 23:9; I Ch 21:22,24) in the legal negotiations and contracts of the Old Testament is the expression בְּכֶסֶף מָלֵא , "for the full price." Although the term is found only three times, it has the appearance of a stereotyped formula, prompting us to raise the question of whether or not the phrase is a terminus technicus of the contract. So we shall investigate the precise force and function of the expression, as well as its place in the Old Testament negotiations and contracts.

All three Old Testament examples of the phrase are found in the course of negotiations for the sale of real estate. Abraham asks the

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[1] John D. Cooney, "The Papyri and Their Sealings, with a Brief Description of their Unrolling," in Kraeling, *Aramaic Papyri*, p. 123. Cf. especially the excellent photographs of the sealed rolls, plate xxi.

[2] Cf. also Is 29:11; Dan 12:4; Job 14:17. But the sealing of the document in Jer 32:10,44 is interpreted differently in the Talmud: "In Talmudic language the sealing of a document (*shetar* or *get*) means neither more nor less than the subscription by the witnesses." (*The Jewish Encyclopedia* (New York: Funk & Wagnalls Co., 1905-1916), Vol. I, p. 395.)

Hittites to entreat for him Ephron, "that he may give the cave of Machpelah, which he owns; it is at the end of his field. For the full price (בְּכֶסֶף מָלֵא) let him give it to me in your presence as a possession for a burying place." (Gen 23:9) This example occurs in the Buyer's Speech. (Cf. above, pp. 53ff.) Likewise, when Ornan offers to give David the threshing floor, the king replies: "No, but I will buy it for the full price (בְּכֶסֶף מָלֵא)...." (I Ch 21:24, cf. also vs 22)

Contrasting sharply with the frequency of the Old Testament use of the term is the common occurrence of the Akkadian equivalent in the cuneiform documents from virtually every period in the history of the Ancient Near East. The Akkadian equivalent of בְּכֶסֶף מָלֵא is *ana/ina šimti gamirti*, "for the full price," or *šimti-šu gamirti*, "its full price." The phrase is common in Old Babylonian contracts,[1] and in the Akkadian documents from Ugarit,[2] but it has no equivalent in the Aramaic texts from Elephantine.

It would be over-simplifying the problem to assume that the phrase had the same meaning through all periods and in all places in the Ancient Near East. But some generalizations seem warranted. The expression usually signifies the sale is a cash sale, that no balance remains to be paid at a later time by the buyer.[3] In the Akkadian texts from

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[1] Johns, *Babylonian and Assyrian Laws, Contracts and Letters*, p. 229; Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts*, texts 84, 86, 87, &etc.

[2] *PRU* III, texts 16.147; 16.174; 16.156; &etc.

[3] Johns, *Babylonian and Assyrian Laws, Contracts and Letters*, p. 235. Credit sales are found in many of the Akkadian texts. Cf. San Nicolo, *Die Schlussklauseln* for a discussion of the development of credit sales in the Old Babylonian period.

Ugarit, where there is definite evidence of a feudal system, the use of the phrase ana šimti gamirti in a contract is one of the means of stating that an outright sale has taken place, rather than simply the transfer of fief-land,[1] with its customary "feudal-service," the ilku or pilku. It is then probably safe to assume that the phrase ana šimti gamirti indicates that a full-fledged sale has taken place, and that there are no further obligations on the part of the buyer.

In the Akkadian texts, this expression occurs in the contract proper, in the Operative part, usually as part of the Purchase Formula. It is almost a modifier of the price paid for the property. One example will suffice:

[Ariradu, s]on of Abdinergal,	
5 has acquired the land	
of Gallanu son of Šapḫalanu,	
at the price of 200 (shekels of) silver	i-na 2 me-at kaspi
'as the full price',[2]	ana šimti gamirti

But we must turn again to the use of the formula in the Old Testament and evaluate the contexts in which it is lodged. Though there are only three occurrences of the precise phrase, certain other expressions seem to substitute for it. In one Buyer Speech in Gen 23, Abraham insists on buying the property of Ephron, offering to pay the full price (בְּכֶסֶף מָלֵא) (vs. 9). When Ephron offers to give him the field, he insists again (in another Buyer Speech), "But if you will, hear me; I will give you the price of the field (כֶּסֶף הַשָּׂדֶה)...." (vs. 13)

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[1] I. Mendelsohn, "Samuel's Denunciation of Kingship in Light of the Akkadian Documents from Ugarit," BASOR, 143 (Oct. 1956), p. 19, note 9. Cf. also Loren R. Fisher, "Abraham and his Priest-King," JBL, LXXXI (1962), pp. 264-5. In PRU III texts 16.156, 15.139, and 16.147 the phrase "for the full price" is used and feudal service is not assumed by the buyer. On the other hand, in PRU III texts 16.140 and 16.262 the phrase "for the full price" is not used and it is expressly stated that the buyer is responsible for the feudal duty.

[2] PRU III, text 16.147, lines 4-8.

כֶּסֶף מָלֵא and כֶּסֶף הַשָּׂדֶה appear to be parallel expressions. Likewise, in the transaction between David and Araunah in II Sam 24, the king does not use the expression "for the full price," but paralleling the use of this technicality in I Ch 21 is David's Buyer Speech in II Sam 24:24: "I will buy it of you for a price (בִּמְחִיר)...." The contexts of the Old Testament use of the phrase בְּכֶסֶף מָלֵא seem to indicate that the phrase means simply that the buyer wants to buy property, paying all that the property is worth. Most commentators have so interpreted the expression. Von Rad sees the use in Gen 23 as Abraham's insistence upon paying "good money" for the cave.[1]

Some conclusions about the history and meaning of our phrase now appear justified. There can be no doubt that the phrase was a terminus technicus of the contract in the Akkadian documents. This conclusion is supported by the widespread use of this particular expression in documents from a great many periods. The place of the phrase is definitely within the contract itself in the Akkadian texts, and this was probably also the case in Hebrew contracts, though no instances are attested. But the phrase would also be used in its full technical sense in the negotiations also, since contracts consist of the summary of the results of the negotiations. The seller would want to know whether or not the buyer intended to pay "the full price."

We have seen that the phrase "for the full price" has some variety of connotation in the legal texts of the Ancient Near East, but that it is usually a terminus technicus indicating that property is paid for completely, that no debt remains, and that full ownership is transferred to the buyer. The expression in the Old Testament probably retains some, if not all, of this technical force. While the phrase is never found in Hebrew contracts per se, in view of its use in the Old Testament negotiations and in Akkadian contracts it is reasonable to assume that the expression could also have been part of the Israelite contract.[1]

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[1] von Rad, Genesis, p. 243; cf. also Gunkel, Genesis, p. 244.

5. Witnessing Formulae

As we have seen (cf. above, pp. 75-8), some form of validation is essential to the complete contract. The most common means of confirming a contract throughout the Ancient Near East, including Ancient Israel, was through the use of witnesses to the transaction. Since the witnessing of an oral contract and that of a written document are distinctively different matters, we take up each form of attestation separately.

a. Witnesses to Written Documents--As with the signing and sealing of the written contract, Jeremiah 32 affords us at least a brief glance into the process of securing witnesses to the bill of sale. The prophet reports: "I signed the deed, sealed it, got witnesses (וָאָעֵד עֵדִים), and weighed the money on scales." (Jer 32:10) This same verb

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[1] There is no reason for concluding with Benzinger that the Chronicler has used the phrase "for the full price" because he found it in the Priestly story of Abraham's purchase in Gen 23. (I. Benzinger, Die Bücher der Chronik (Tübingen: J. C. B. Mohr, 1901), p. 64.) In view of the widespread use of the phrase in the Ancient Near East, it is much more logical to assmue that both the Chronicler and the Priestly Writer have been influenced by correct legal procedure, using phrases which were probably common in their environment.

(עוד) is used in the third person in Jer 32:25 and 44. The verb is a denominative from עֵד, "witness," used here in the hiphil. A passage in Isaiah contributes further to our understanding of the use of witnesses to written documents: "Then the Lord said to me, 'Take a large tablet and write upon it in common characters, 'Belonging to Maher-shalal-hashbaz.'' 2 And I got myself reliable witnesses (וְאָעִידָה לִּי עֵדִים נֶאֱמָנִים),[1] Uriah the priest and Zechariah the son of Jeberechiah." (Is 8:1-2)[2] What has been rendered by the colorless translation, "to get witnesses," is the act of calling upon citizens to observe the making of a contract and either sign the documents or allow their names to be listed by the scribe. Whether the verb עוד as used in such a context is a terminus technicus or simply an improvisation, we cannot say. The hiphil of עוד is, however, used many times in the discussion of legal proceedings, with a variety of connotations.[3]

Since we have no complete contracts in the Old Testament, we turn again to the Ancient Near Eastern contracts to see how witnesses are employed to written documents. Witnesses are generally considered essential to validating a transfer of property. One of the provisions in the Code of Hammurapi stipulates:

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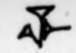
[1] The Isaiah *DSS* manuscript reads here והער instead of וְאָעִידָה, and the Syriac, Targum and the Greek read והעירה. The *MT* has shifted to the first person while the other manuscripts continue the command of verse 1 into verse 2, reading the verb in the imperative.

[2] The *RSV* adds at this point "to attest for me," which is surely the point of getting the witnesses, but the translation adds a phrase not found in the *MT*.

[3] Cf. I K 21:10,13; Mal 2:14. Cf. Boecker, *Redeformen*, pp. 164 ff.

> 7. If a seignior has purchased or he received for safekeeping either silver or gold or a male slave or a female slave or an ox or a sheep or an ass or any sort of thing from the hand of a seignior's son or a seignior's slave without witnesses (*ši-bi*) and contracts, since the seignior is a thief, he shall be put to death.[1]

It is the witnessing of the transaction which makes the contract valid.[2] The names of the witnesses were listed by the scribe at the conclusion of the document, and often the witnesses--as well as the parties--impressed their seals or made a nail-mark.[3] The names of the witnesses in most cuneiform documents are preceded by the sign  , to be read *šibu*, "witness." The ancestors of the witnesses may or may not be given.

Much that has been said of the cuneiform contracts applies also to the Aramaic documents. In most cases the names of the witnesses are preceded by the designation *sahaddayaʾ*, "the witnesses," or *sahadayyaʾ bego*, "the witnesses within";[4] and the patronymics of the witnesses are usually, but not invariably, given. Corresponding to the cuneiform practice of sealing the contract by the witnesses is the Aramaic rule of allowing the witnesses to sign their own names, though often the names are simply listed by the scribe.[5] Though it is possible in Elephantine for women to own property and participate in litigation, testimony in the colony--as generally throughout the ancient world--was a man's business.[1]

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[1] Meek's translation in *ANET*, p. 166. Text published by A. Deimel, *Codex Hammurabi: transscriptio et translatio Latina* (Rome: Pontificii instituti biblici, 1930-32). The Code of Hammurapi also refers to witnesses to a sale being called up to prove the purchase, cf. No. 9, *ANET*, p. 166. For further references to witnesses, cf. paragraphs No. 10-13, 122ff.

[2] Johns, *Babylonian and Assyrian Laws, Contracts and Letters*, pp. 80-1.

[3] *Ibid.*, p. 87.

[4] Cf. Yaron, *Law of the Aramaic Papyri*, pp. 16 ff. for a discussion of the possible technical force of *bego*. Cf. also J. J. Rabinowitz, *Jewish Law* (New York: Bloch Publishing Co., 1956), pp. 155 ff.

[5] Yaron, *Law of the Aramaic Papyri*, pp. 17 ff.

b. Witnesses in Oral Contracts--There are numerous references to witnesses and to witnessing in the Old Testament, and there are several different types of witnesses. There are, in the first place, witnesses to a legal agreement, who attest to a contract--whether that contract be oral or written. This is the type of witness which we are trying to understand and explain here. We should distinguish this form of witnessing from the witnesses who are called up in a trial, those who have information concerning a crime or have witnessed a contract which is being questioned in a civil dispute.[2] There are also references to witnesses in the sense of "one who testifies for" someone or something, in the sense of proclaiming a message.[3]

When we turn to witnesses to contracts, we can easily see how witnesses to written documents would validate and substantiate the transaction involved because their names are recorded with the contract itself. There can be no doubt that these individuals had been present at the proceedings and that the transaction had occurred as recorded in the document. But how does one "get witnesses" to an oral contract? How are the observers of the transaction so firmly bound to the contract that they make the transaction valid? The answers to both these questions are given to us quite clearly in several texts of the Old Testament, most important of which is Ru 4:9-11a: "Then Boaz said to the elders and all the people,

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[1] Ibid., p. 23.

[2] Cf. Ex 23:1-3; 20:16; Lev 5:1; Dt 19:16-19; Jer 29:23; Zeph 3:8; Mal 3:5; Ps 35:11; Prov 14:5; 24:28; Job 10:17.

[3] Cf. Is 55:4.

'You are witnesses this day(עֵדִים אַתֶּם הַיּוֹם) that (כִּי) I have bought from the hand of Naomi all that belonged to Chilion and to Mahlon. 10 Also Ruth the Moabitess, the widow of Mahlon, I have bought to be my wife, to perpetuate the name of the dead in his inheritance, that the name of the dead may not be cut off from among his brethren and from the gate of his native place; you are witnesses this day (עֵדִים אַתֶּם הַיּוֹם).' 11 Then all the people who were at the gate, and the elders, said, 'We are witnesses.' (עֵדִים)"

There can be no doubt that the statements "You are witnesses," "We are witnesses," are firmly stamped formulae of the Hebrew law court.[1] These are the witness formulae, the call to be witnesses, and the acceptance of the call by the witnesses. That these statements are official forms of the legal process is borne out by their occurrence in several other places in the Old Testament.

The same two subjectively formulated statements are found in the covenant ceremony of Josh 24:22: "Then Joshua said to the people, 'You are witnesses (עֵדִים אַתֶּם) against yourselves that (כִּי) you have chosen the Lord, to serve him.' And they said, 'We are witnesses.' (עֵדִים)" The people are witnesses who are present at an agreement and are able to confirm it in case of future doubt,[2] just as the witnesses in Ru 4. The content of what is witnessed may be introduced by כִּי .[3]

These passages reveal to us how witnesses are secured for oral contracts. The formalities of the process officially bind the observers, making them legal witnesses who can verify the transaction in the future if there is conflict about the terms and conditions. Such formal witnessing would be sufficient to validate the contract in the early period, but later on written documents were introduced, still validated by the witnesses.[1] In the oral documents, it is the formulae of witnessing expressed by the observers which validate the contract. The formulae would be used at the time of the drafting of the contractual agreement.

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[1] This has been noted by Koehler, KB, p. 682, as well as by Boecker, Redeformen, p. 165. Koehler calls the forms, respectively, Formel des Zeugenaufrufs and Formel der Annahme der Zeugenschaft.

[2] Cf. KB, p. 681.

[3] Boecker, Redeformen, p. 164. The introduction of the object clause by כִּי is common on Biblical Hebrew, cf. GKC, p. 491.

The witnessing formulae from the contract ceremony help us to understand certain expressions in other texts. In several passages in II Isaiah these subjective formulae have been appropriated by the prophets in the service of their message:

> Fear not, nor be afraid;
> have I not told you from of old and declared it?
> And you are my witnesses (וְאַתֶּם עֵדָי)
> Is there a God besides me?
> There is no rock; I know not any. (Is 44:8)

In another passage the prophet hears Yahweh calling upon the nations to come together and produce witnesses to prove that their gods had told them in advance what would happen in the future:

> Let them bring their witnesses (עֵדֵיהֶם) to justify them,
> and let them hear and say, It is true.
> 'You are my witnesses,' (אַתֶּם עֵדַי) says the Lord,
> 'and my servant whom I have chosen....(Is 43:9b-10a)

Yahweh himself produces witnesses who heard what he declared about the future, and now can attest to that statement:

> I declared and saved and proclaimed,
> when there was no strange god among you;
> and you are my witnesses (וְאַתֶּם עֵדַי), says the Lord. (Is 43:12)

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[1] Cf. also Horst, "Das Eigentum nach dem Alten Testament," pp. 209-10.

We see here both how witnesses are secured for a matter, and how they are later called upon to testify to that fact. The same formula is used in both cases.

Thus far we have been discussing the call to be witnesses and the acceptance of that call formulated subjectively, witnesses being addressed directly by one of the legal parties and the witnesses responding directly to that party. In many cases, however, it is Yahweh who is called upon as the witness. Samuel's speech to the people of Israel has many legal formulae in it: "And he [Samuel] said to them, 'The Lord is witness (עֵד יהוה) against you, and his anointed is witness (וְעֵד מְשִׁיחוֹ) this day, that you have not found anything in my hand.' And they said, 'He is witness.' (עֵד)" (I Sam 12:5) Malachi speaks of a common legal transaction which was witnessed by Yahweh. The prophet says Yahweh no longer regards the offering: "You ask, 'Why does he not?' Because Yahweh witnessed (הֵעִיד)[1] between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant." (Mal 2:14)[2]

In a few other instances, the calling of Yahweh to be witness closely resembles the oath, and has a function similar to that of the oath, the self-curse. The people pledge to Jeremiah: "May the Lord be a true and faithful witness against us (יְהִי יְהוָה בָּנוּ לְעֵד אֱמֶת וְנֶאֱמָן) if we do not act according to all the word with which the Lord your God sends you to us." (Jer 42:5)[1]

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[1] The RSV translates somewhat freely at this point, "Because the Lord was witness to the covenant between you and the wife of your youth..." This brings out the sense clearly, but the MT does not have בְּרִית at this point.

[2] Cf. also Gen 31:50.

Another category of witness formulae speaks of inanimate objects as the witness, usually to some agreement or promise. The best known text is the covenant between Jacob and Laban: "Then Laban said to Jacob, 'see this heap and the pillar, which I have set between you and me. 52 This heap is a witness (עֵד הַגַּל הַזֶּה), and the pillar is a witness (וְעֵדָה הַמַּצֵּבָה), that I will not pass over this heap to you, and you will not pass over this heap and this pillar to me, for harm." (Gen 31:51-2)[2] This shows the use of the witness formula in the conclusion of a covenant.[3]

So then, these witness forms contribute materially to our understanding of the Sitz im Leben of the Israelite oral contract. They demonstrate that the process is oral, and that the parties themselves call the witnesses, not that some judge or permanent court calls witnesses or itself testifies to the contracts. We hear that Boaz simply called "ten men of the elders of the city" to witness the process. (Ru 4:2) These witness formulae, as well as the other allusions to witnesses to oral agreements in the Old Testament, show us that the Hebrew law court performed a "notary function,"[1] the validating of public agreements, including purchases.

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[1] Cf. also Micah 1:2. The Syriac version of I Sam 20:12 inserts עֵד to complete the formula: "And Jonathan said to David, 'The Lord, the God of Israel, be witness ...."

[2] The story of the conclusion of the covenant between Laban and Jacob is a complex narrative, whose preoblems are not completely solved by simply separating the various sources represented here. (Gen 31:44-54) The complexity confuses the issue of witnessing, for we hear now that the covenant (ברית) is witness (vs. 44), now that God is witness (vs. 50), and now that the heap or the pillar (הגל, המצבה) is witness (vss. 48,52). For a discussion of the various strands of tradition here cf. M. Noth, Überlieferungsgeschichte des Pentateuch (Stuttgart: W. Kohlhammer, 1948), pp. 101 ff., and von Rad, Genesis, pp. 306 ff.

[3] Cf. also Josh 22:26-27,34; 24:27; Dt 31:19,26; Is 19:20, for other examples of inanimate objects as witnesses. And on the covenant and contract, cf. below, Chapter III, 3.

Excursus: The Elders

But since many passages in the Old Testament relate the functions of the court to the elders,[2] we must ask ourselves whether or not the elders do in fact constitute an official body, a formal court. Max Weber has suggested that the elders "appear, above all, in Deuteronomic law ~~as~~ the Zikne ha-'ir, permanent public authorities who sit 'in the gate,' that is to say, administer and hold court in the market place of the gates of the city."[3] But there is little evidence for permanent court officials in the Israelite legal structure. Abraham's purchase of the field of Ephron is validated simply because it occurred "before all who went in at the gate of his [Ephron's] city." (לְכֹל בָּאֵי שַׁעַר־עִירוֹ) (Gen 23:10,18) Speiser has shown[4] that this phrase refers to a particular group of individuals of the city, those who have a voice in the affairs of the community, in short, the elders.

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[1] Boecker, pp. 163 ff.

[2] Cf. above, pp. 4 ff., and Dt 21:19-20; 25:8-10.

[3] Weber, Ancient Judaism, p. 17.

[4] E. A. Speiser, "'Coming' and 'Going' at the 'City' Gate," BASOR, 144 (1956), pp. 21-23. Cf. also Geoffrey Evans, "'Coming' and 'Going' at the City Gate--A discussion of Professor Speiser's Paper," BASOR, 150 (April, 1958), pp. 28-33. Cf. also Skinner, ICC, Genesis, p. 337, and von Rad, Genesis, pp. 242, 244.

The elders were not a permanent body of officials, but were simply the full-fledged citizens of the city, those capable of administering justice.[1] And there are many indications that the office of witnessing is not restricted, but somewhat broad, perhaps including more than the elders. When Boaz calls witnesses, he addresses himself to "the elders and all the people" (לַזְּקֵנִים וְכָל־הָעָם), and the response to this call is given by "all the people who were at the gate, and the elders." (כָּל־הָעָם אֲשֶׁר־בַּשַּׁעַר וְהַזְּקֵנִים) (Ru 4:9,11) Probably, then all full-fledged citizens of a city could serve as witnesses.

There is insufficient evidence in the Old Testament for determining whether a set number of witnesses was ever required for any particular kind of transaction. The only mention of a specific number is Ru 4:2, when Boaz sets out ten of the elders to witness the process.[2]

6. The Oath

Very often in the contracts of the Ancient Near East an oath is used to authenticate the transaction. This form of validation is not nearly so common, however, as the use of witnesses, and usually when the oath is used witnesses to the transaction are also noted. Most Sumerian deed of sale include an oath by the parties as well as a list of witnesses.[1] And many Old Babylonian documents have the oath by one or both parties as well as an oath of the witnesses.[2] Usually the contract simply records "they swore" by the king or by a certain god. An Old Babylonian contract recording the division of an estate reads:

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[1] Cf. Koehler, "Justice in the Gate," p. 133: "All who have legal rights are judges...." Lurje also equates judges and elders. (Studien zur Geschichte der Wirtschaftlichen und Sozialen Verhältnisse im Israelitisch-Judischen Reich (Giessen: A. Töpelmann, 1927), p. 47. Cf. also Pedersen, Israel, Vol I, p. 36.

[2] Yaron has attempted--with dubious results--to determine the required numbers of witnesses for particular kinds of agreements in Elephantine. Cf. Yaron, Law of the Aramaic Papyri, pp. 17 ff.

> Nur-Shamash, Ilima-ahi, Palatum, and Humurum have divided the property of their father. On no account will they file claim against one another. By Shamash, Aya, Marduk, and Hammurabi they swore. (it-mu-ú)[3]

The names of four witnesses and the date complete the document. We should ask first of all what the purpose of the oath was, and secondly, whether or not the oath is found with the Israelite legal transactions.

Throughout the Ancient Near East, the oath is usually taken in the name of one of the gods or in the name of the king.[4] To swear is to make a statement or a promise with an oath, pledging something valuable (cf. *KB*), usually one's life. One may understand the oath as a conditional self-curse:[5] "May the Lord do such and such to me if...." is typical. One "swears to (his own) hurt" (נִשְׁבַּע לְהָרַע) (Ps 15:4). The oath may also be understood as calling upon God to witness a statement or a promise, with the understanding that God will hold him who swears responsible for what he has said.[1]

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[1] Mendelsohn, *Slavery in the Ancient Near East*, p. 34.

[2] M. San Nicolo, "Zur Entwicklung der Babylonischen Urkundenformen," pp. 26 ff., and Yaron, *JSS*, II, p. 56. Cf. Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, pp. 80-81.

[3] M. Schorr, *Urkunden des altbabylonischen Zivl- und Prozessrechts*, no. 184. Translated by Meek, *ANET*, p. 218. A similar oath is taken by the parties to a contract cited by Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, p. 229.

[4] On the oaths in the Aramaic papyri, cf. Yaron, *Law of the Aramaic Papyri*, p. 32.

[5] J. Pedersen, *Der Eid bei den Semiten* (Strassburg: Karl J. Trübner, 1914), pp. 103 ff.

One should distinguish between two distinctively different types of oath, which we shall call the assertory oath and the promisory oath. The assertory oath is essentially a part of the trial, and in early Mesopotamia was almost the equivalent of trial by ordeal. A person accused of a crime might be required to purge himself by oath,[2] the feeling being that a guilty person would be afraid to swear innocence, for to swear falsly was a dangerous matter, incurring the wrath of the god. The assertory oath was also a part of civil disputes in the Ancient Near East. Witnesses might be compelled to submit their testimony to the oath in both civil and criminal trials.[3] The Elephantine papyri refer to disputes which were resolved when one of the parties swore to certain facts: the oath was accepted as proof of ownership.[4]

There is some evidence for the use of the assertory oath in the Israelite legal procedures: "If a man delivers to his neighbor an ass or an ox or a sheep or any beast to keep, and it dies or is hurt or is driven away, without any one seeing it, 10 an oath by the Lord (שְׁבֻעַת יהוה) shall be between them both to see whether he has not put his hand to his neighbor's property; and the owner shall accept the oath, and he shall not make restitution." (Ex 22:9-10 (Eng 10-11)) Here, as in Babylonia, the swearing of the oath is sufficient to purge the accused. The oath would be an assertory oath, the defendent simply swearing that he has not stolen the property.

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[1] Cf. above, p.114 , and Ju 11:10; Jer 42:5; Micah 1:2; and I Sam 20:12a (with the emendation from *Syriac*).

[2] Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, p.90.

[3] *Ibid.*, p. 86.

[4] Cf. Cowley, *Aramaic Papyri*, P 44. Yaron points out that all the oaths in the Aramaic papyri are assertory. There is no evidence of a promissory oath, whereby a party solemnizes an undertaking as to his future behaviour. (*Law of the Aramaic Papyri*, pp. 32 ff.)

The most detailed description of the administration of the oath to an accused person is given in Nu 5:11-31, where we find the law for the trial of a woman accused of adultery. The accused is to be brought "before Yahweh" and--with elaborate ritual--made to "take an oath" which is a conditional self-curse. If she is innocent she will be free from the curse of "the waters of bitterness" which she must drink, but if she is guilty her body will swell and her thigh will fall away.[1]

But other oaths which we hear of in the Old Testament are promissory oaths, more closely related to the contract than are the assertory oaths. The content of the oath in the Old Babylonian contract cited above (p.118) is obviously the agreement that the parties will not file claim against one another. Most of the oaths connected with contracts involve some such pledge of no-contest in the future, and are therefore promissory oaths. When Jacob purchases Esau's birthright, the transaction is solemnized with an oath: "Jacob said, 'Swear to me this day.' (הִשָּׁבְעָה לִּי כַּיּוֹם) So he swore to him, (וַיִּשָּׁבַע לוֹ) and sold his birthright to Jacob." (Gen 25:33) The content of the oath could have only been promissory, the pledge to abide by the conditions of the transaction. But this is the only example we have found in the Old Testament of the oath used to solemnize a purchase of any sort. And even this example is something quite different from the outright sale of real estate or any tangible object.

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[1] Cf. also I K 8:31-32; II Ch 6:22-23; and The Code of Hammurapi, no. 240, ANET, p. 176.

As one looks further in the Old Testament for examples of the promissory oath, he begins to move out of the realm of the economic or even the legal transaction. Very common is the use of the oath in speeches of God, such as the address to Isaac: "Sojourn in this land, and I will be with you, and will bless you; for to you and to your descendants I will give all these lands, and I will fulfil the oath which I swore (הַשְּׁבֻעָה אֲשֶׁר נִשְׁבַּעְתִּי) to Abraham your father." (Gen 26:3)[1] The constant recurrence of the oath with covenant ceremonies forces one to ask whether or not the oath in the Old Testament belongs with the covenant rather than the economic contract of sale. We shall deal with this question below. (Cf. Chapter III, 3)

Another form of attestation to contracts found in the Ancient Near East is royal verification. The great majority of the Akkadian judicial texts from Ugarit are classified either as "acts before the king" or "acts of the king."[2] Significant is the fact that the type of document is classified as either "before witnesses" (a-na pa-ni $^{\text{amil M}}$ši-bu-ti), "before the king," or "X, king of Ugarit, has...,"[3] indicating that royal confirmation was equivalent to attestation by witnesses. We have not been able to find examples of royal attestation to transactions in the Old Testament. The fact that there is no reference to witnesses in David's purchase of the threshing floor (II Sam 24; I Ch 21) is not sufficient evidence for concluding that royal verification has taken the place of witnesses.

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[1] Cf. also Ex 13:5, 11; 33:1; Nu 11:12; 14:16,23; Dt 1:8; b:10; Ps 105:9-11, &etc.

[2] PRU III, p. 23. The archives are, of course, royal archives.

[3] Ibid., pp. 24 ff.

In the transactions of the Old Testament, the rule almost universally followed is attestation and verification by witnesses, whether the contract be oral or written. This is also the rule throughout the Ancient Near East as a whole, though these other forms of validation do occur. Our study has not revealed any oath formulae in the Old Testament contract ceremonies, though the single reference to the oath in a sale (Gen 25:33) as well as the reference to oaths in Akkadian contracts reveals that such forms could have existed.

7. Date Formulae

Our description of the schema of the various contracts throughout the Ancient Near East has revealed that most of these documents are dated. (Cf. above, pp.76-8) The Aramaic documents from Elephantine almost without exception begin with the date.[1] On the other hand, the date is the last element of the Old Babylonian documents,[2] as well as in the Neo-

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[1] Cf. Cowley, Aramaic Papyri, P 6, P 8, P 13, &etc.

[2] San Nicolo, "Zur Entwicklung der Babylonischen Urkundenformen," pp. 26 ff.

Babylonian "dialogue-documents."[1] The Assyrian documents give the date either as the last element of the contract or immediately before the names of the witnesses, which then would be last. Assyrian texts are dated by the eponyms,[2] the names given to the years and entered on a list, called the Eponym Canon.

The most elaborate dating is found in the Aramaic papyri: "On the 3rd of Chisleu, that is the 10th day of the month Mesore, year 19 of Artaxerxes the king...."[3] The day is given in both the Babylonian and the Egyptian month names.[4] Most of the documents of Babylonia are also dated with reference to the name of the king, often by some distinctive act he performed. An Old Babylonian document closes: "The month of Kislim, the 15th day, the year Ammi-ditana, the king, brought in his statute (representing him as) offering prayer, scepter in hand."[5] Surprisingly, dated documents are not the rule in the material recovered from Nuzi.

We now raise the question whether or not the date formula, so common in the Ancient Near East, but not universal, is to be found in the contracts of the Old Testament. To open this issue we turn to the somewhat unusual "date" formulae in the Akkadian documents from Ugarit. Instead of giving an exact date, the documents begin with the formula iš-tu ûmi^{mi} an-ni-i, "dating from this day," and the formula is completed at the end of the document with the expression a-da-ri-ti, "for always," "in perpetutity."[1]

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[1] _Ibid._, p. 32.

[2] Kohler and Ungnad, _Assyrische Rechtsurkunden_, p. 447.

[3] Cowley, _Aramaic Papyri_, P 13, line 1.

[4] Cf. Yaron, _Law of the Aramaic Papyri_, pp. 7 ff., for a complete discussion of the dating of the Aramaic papyri. One group of the texts gives only the Egyptian month, while the other group gives both Egyptian and Babylonian months.

[5] Schorr, M. _Urkunden des altbabylonischen Zivil- und Prozessrechts_, no. 84, translated by Meek, _ANET_, p. 219.

When one looks at the Old Testament oral contracts with this particular "date" formula in mind, there do indeed seem to be "date formulae"--or at least traces of such forms--in the Hebrew contracts. Boaz validates his contract, saying: "You are witnesses this day (הַיּוֹם)....you are witnesses this day (הַיּוֹם)." (Ru 4:9-10) The same formula is found in Samuel's call to be witnesses: "The Lord is witness against you, and his anointed is witness this day (הַיּוֹם הַזֶּה)...." (I Sam 12:5) And again, Laban says to Jacob: "This heap is a witness between you and me this day (הַיּוֹם)." (Gen 31:48)[2] All of these examples of the "date formula" are found in the context of making witnesses, in a legal process of one form or another.

The same formula is found also outside of the witness formulae but still in the context of transaction: "Jacob said, 'Sell me this day (כַיּוֹם) your birthright.' 32 Esau said, 'I am about to die; of what use is a birthright to me? 33 Jacob said, 'Swear to me this day (כַּיּוֹם).'" (Gen 25:31-33a) And when Joseph buys up the land of the Egyptians, he addresses them: "Behold, I have this day (הַיּוֹם) bought you and your land for Pharaoh." (Gen 47:23) In view of so many examples of the formula in legal or purchase situations, it is not unrealistic to conclude that the phrase "this day" is the Hebrew equivalent of the date formula in the oral contracts.[1]

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[1] PRU III, pp. 24 ff. According to Nougayrol, the scribes thought it unnecessary to date their tablets in a more precise fashion, considering it sufficient to mark that the act had intervened at a certain moment, and that it was--without stipulation to the contrary--for 'eternity.'

[2] Cf. also perhaps Josh 24:15,25.

There are indications, though no direct evidence, that Israelite written documents bore a date formula. We hear in I Maccabees when Simon was made leader and high priest, that, among other things, "he should be obeyed by all, and that all contracts (γράφωνται) in the country should be written in his name...." (I Macc 14:43) Our suspicion that the writing of contracts "in his name" (ὀνόματι αὐτοῦ) refers to the dating of the documents is confirmed by the heading to the proclamation which the people inscribed on bronze tablets and put on pillars on Mount Zion: "This is a copy of what they wrote: 'On the eighteenth day of Elul, in the one hundred and seventy-second year, which is the third year of Simon the great high priest....'" (I Macc 14:27b) The writing of contracts in the name of Simon probably meant dating the contracts in the years of his reign. One of our very few examples of contracts from Palestine, the Kephar Bebhayu conveyance, begins with a date formula: "On the tenth of Adar of the year three of the Freedom of Israel, in the Village of Bebhayu."[2] This Aramaic document dates from the Bar

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[1] There are some examples of a fuller formula, corresponding even more closely to the full formula of the documents, but there are no examples of this phrase in negotiations or legal situations per se. We are referring to the phrase "from this time forth and for evermore" (מֵעַתָּה וְעַד־עוֹלָם), found in Is 9:6 (Eng 7); 59:21; Micah 4:7; and Ps 113:2. This corresponds closely not only to the Ugaritic Akkadian formula, but also to the phrase "from this day and forever " (מן יומא זנה ועד עלם) used in some Aramaic documents from Elephantine. (Cf. Kraeling, Aramaic Papyri, P 2:4; P 7:4; and Cowley, Aramaic Papyri, P 15:4. For a similar expression in Ugaritic, cf. I AQHT, col iii, lines 154, 161, 162, 168; cf. Ginsberg's translations, ANET, pp. 154-5.

[3] The translation is that of Birnbaum, PEQ (89), p. 130.

Kokhba revolt of c. 134 A. D., which is quite late for reconstructing Biblical forms, but it does show the use of the date formula in a written deed from Palestine.

Excursus: Legal Acts of Assuming Possession

We have not answered the question of the precise point in the contract ceremony at which property changes hands. Is ownership transferred the minute the contract is completed, or is some further step required by one or both of the parties to the agreement? San Nicolo points out that the Old Babylonian contracts do not mention the handing over (traditio in Roman law) of the property, which signifies that the actual transfer was effected by the contract itself, the seller passing over ownership to the buyer. Any further step, if such existed, was then a unilateral act by the new owner on the basis of the contracted agreement.[1] The completion of the contract, then, accompanied by the payment of the purchase price, would complete the transfer of ownership. This mode of acquisition, where ownership is transferred with the completion of the contract is reported at least once in the Old Testament. We have seen that the expression "the field ....went over (וַיָּקָם) to Abraham ...." (Gen 23:17-18), refers to the complete act of transfer, and signifies that the land has become the possession of Abraham.[2] The execution of the contract accomplishes the transfer.

But ancient law in general and the Old Testament in particular reveal many other means of effecting transfer, both with and without the benefit of formal contracts. According to Jewish tradition, the taking of possession by the purchaser seems to be a full substitute for the writing of a deed.[1] Indeed, there are traditions which hold that a contract with the assent of the parties did not effect transfer, which could take place only by the actual delivery of the property.[2]

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[1] San Nicolo, Schlussklauseln, p. 18.

[2] Cf. above, pp. 82-3.

But how is it possible to deliver a parcel of real estate? Land is not a commodity which can be bodily passed from seller to buyer. David Daube calls our attention to some Roman legal customs which help explain how land could be handed over. He cites a fragment from the Digest: "If my vendor from my tower points out neighbouring land to me who have bought it, and says that he delivers vacant possession, I begin to possess no less than if I had set foot within its boundary."[3] Note that the vendor's expression of his intention to deliver the land is essential to this form of transfer. Note also the allusion to what must have been an even more common form of taking possession, setting foot within the boundary of the property.

The question now before us is whether or not there were Biblical legal rituals analogous to those in Roman law and Jewish tradition. In one Biblical text we are told explicitly of a legal ritual in the framework of property transfer, the action of the go'el in Ru 4: "Now this was the custom in former times in Israel concerning redeeming and exchanging (וְעַל-הַתְּמוּרָה): to confirm every transaction (כָּל-דָּבָר), the one drew off his sandal and gave it to the other, and this was the manner of attesting (הַתְּעוּדָה) in Israel. So when the *go'el* said to Boaz, 'Buy it for yourself,' he drew off his sandal." (Ru 4:7-8) The *go'el's* decision is ratified by the symbolic gesture of pulling off his sandal, and the narrator saw this as a general custom "in former times in Israel" with reference to agreements of all sorts. But our only other direct reference to the sandal removal rite deals with the *go'el* duty and levirate marriage, as does Ru 4. The passage is Dt 25:5-10, which spells out the duty of a man to his brother's childless widow. If the man refuses to take his brother's widow and raise up sons to succeed to the name of the brother, the elders shall call him, and "then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, 'So shall it be done to the man who does not build up his brother's house.' And the name of his house shall be called in Israel, The house of him that had his sandal pulled off." (Dt 25:9-10) Though there are significant differences between the rituals of Dt 25:5-10 and Ru 4,[1] we have no doubt that they refer to essentially the same custom.

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[1] Dembitz, The Jewish Encyclopedia, Vol. I, p. 395.

[2] Ibid., Vol. IV, p. 248.

[3] Daube, p. 28.

The exact significance of the shoe removal ceremony has been the subject of some discussion. E. A. Speiser[2] suggests that the action of handing over a shoe was a fictitious payment used to circumvent legal restrictions against sale. He finds the evidence for this interpretation in two Nuzi texts which mention shoes as legal symbols rather than items of economic compensation. In one text a man receives from another the latter's daughter as a gift (*makannu*) while the father receives only "a cloak and a pair of shoes."[1] The ceremonial transfer of the shoes and the cloak is in lieu of actual compensation. Speiser concludes that this custom explains the allusions in Amos to "selling the needy for a pair of shoes"[2] as references to oppression of the poor by means which may be legal--giving "token" payment--but which do not conform to the spirit of the law. "The ordinary interpretation of this saying that the poor could be enslaved for so trifling a thing as a pair of shoes is unconvincing, by comparison, and economically improbable."[3]

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[1] "The present account differs at three points: a more distant relative is expected to marry the widow, he takes off his own shoe, and no one blames him. The episode recorded in Ruth could represent an earlier or a later stage than that in Deuteronomy, or it could be a later misunderstanding of an obsolete custom, or Boaz' intentional twisting of the law may confuse the issue." (L. P. Smith, *The Book of Ruth*, "Exegesis," *IB*, Vol. 2 (New York: Abingdon Press, 1953), p. 848.)

[2] E. A. Speiser, "Of Shoes and Shekels," *BASOR*, 77 (Feb. 1940), pp. 15-20.

Very closely related to the sandal-removal ceremony in Ru 4 and Dt 25:9-10 is a symbolic action mentioned in the Psalms:

> God has spoken in his sanctuary:
> 'With exultation I will divide up Shechem
> and portion out the Vale of Succoth.
> Gilead is mine; Manasseh is mine;
> Ephraim is my helmet;
> Judah is my scepter.
> Moab is my washbasin;
> upon Edom I cast my sandal;
> over Philistia I shout in triumph. (Ps 60:8-10; 108:8-10, Eng 7-9)

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[1] *Ibid.*, p. 17. The text is in *HSS* V, 17, lines 9-10. Cf. also *HSS* V, 76, lines 6-8.

[2] Am 2:6; 8:6. But note that 2:6 speaks of selling (מִכְרָם) while 8:6 speaks of buying (לִקְנוֹת).

[3] Speiser, *BASOR*, 77, p. 18. Cf. the Greek of I Sam 12:3, and De Vaux, Ancient Israel, p. 169.

The expression "over Edom I cast my sandal" implies taking possession,[1] obviously here by military conquest.

While the action described here by the Psalmist is reminiscent of the sandal-removal ceremony, it is also quite similar to another acquisition ritual, taking possession by putting one's foot on a piece of land. This custom is mentioned in the fragment from Roman law cited above. It must have also been common in many ancient legal traditions, for it is mentioned in Akkadian texts from Nuzi. Many "sale-adoption" documents contain a sentence such as the following: "^{m}En-[na]-a-a i-na zitti-šu šêpi-šu uš-te-li-ma, Ennaya (adopter) lifted up his foot out of his (own) inherited plot and placed his (adopted man's) foot (therein)."[2] This symbolic action, like the removal of the shoe in Ru 4:7-8, is carried out by the party who is renouncing ownership.

In view of these customs, one might expect to find similar rituals in the Old Testament. Daube has already suggested that there are such parallels. He sees in Yahweh's command to Abram to "Arise, walk through the length and breadth of the land, for I will give it to you," (Gen 13:17) ~~a~~ parallel to the rite of taking possession by stepping on the land.[3] This text alone would be insufficient to prove the existence of such a custom among the ancient Israelites, but other examples are forthcoming. Yahweh's promise to Joshua is another case in point: "Every place that the sole of your foot will tread upon I have given to you, as I promised to Moses." (Jos 1:3) Another example is Prov 23:10-11:

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[1] Cf. also De Vaux, Ancient Israel, p. 169, and Barrois, "Trade and Commerce," IDB, Vol. IV, p. 678.

[2] SMN 2366, lines 8-9, translated by E. R. Lacheman, "Note on Ruth 4:7-8," JBL, LVI (1937), p. 54. Cf. also SMN 2390, lines 13-15; SMN 2430, lines 11-17; SMN 2338, lines 6-9; and HSS V, 58, lines 9-10, all cited by Lacheman.

[3] Daube, p. 37. Cf. also Gen 28:13, and I. Epstein, ed., The Babylonian Talmud, Seder Nezikin, Baba Bathra (London: The Soncino Press, 1935), vol. 21, p. 418.

> Do not remove an ancient landmark
>   or enter the fields of the fatherless; (וּבִשְׂדֵי יְתוֹמִים אַל־תָּבֹא)
> for their go'el is strong;
>   he will plead their cause against you.

Our argument that entering the field is an act of acquisition is strengthened by the fact that such an action is here set in parallel with removing a landmark, certainly a means of taking possession, albeit an illegal one.

Ahab's action following the death of Naboth probably reflects some similar act of acquisition. When Jezebel hears of the death of Naboth, she tells Ahab: "Arise, take possession (רֵשׁ) of the vineyard of Naboth the Jezreelite....Ahab arose to go down to the vineyard of Naboth the Jezreelite, to take possession of it (לְרִשְׁתּֽוֹ׃)." (I K 21:15-16, cf. also vss. 18-19) Whatever Ahab must do to take possession of the vineyard requires his presence there; it is likely that he signified his ownership by stepping on the land.[1]

Another Old Testament ritual of signifying acquisition has been discussed in some detail by K. Galling.[2] Possession could be proclaimed, he reasons, by the calling of the name of the new owner over the property.

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[1] One might be tempted to interpret Jer 37:12 as a similar ritual performed by the prophet to take possession of the land bought in Jer 32. Jer 37:12 reads: "Jeremiah set out from Jerusalem to go to the land of Benjamin to receive his portion there among his people." The contexts of both passages, however, make it quite clear that the trip to Anathoth occurred before the purchase of the field from Hanamel.

[2] K. Galling, "Die Ausrufung des Namens als Rechtsakt in Israel," ThLZ, 81 (1956), pp. 65-70. Cf. also Boecker, pp. 169-71.

This explains why Joab called David to come and take the city of Rabbah, lest the general himself take the city, "and it be called by my name." (II Sam 12:26-31) Though Galling finds no exact statement of the formula for the calling of the name, the numerous allusions which he produces show conclusively that such a custom existed in ancient Israel.[1]

Related to this ritual is the certification of ownership by some visible mark on the property in question. This custom will have applied primarily to movable property, especially slaves. Some such practice is mirrored in a passage from II Isaiah:

> This one will say, 'I am the Lord's,'
> another will call himself by the name of Jacob,
> and another will write on his hand, 'The Lord's,'
> and surname himself by the name of Israel. (Is 44:5)

Cain's mark (Gen 4:15) and the mark (תָו) on the forehead (Ezk 9:4) may also be reflections of some marks of possession.[2] However that may be, there can be no doubt that Ex 21:6 describes a ritual of marking a slave as a permanent possession. If a slave freely says that he does not wish to go out free, "then his master shall bring him to God, and he shall bring him to the door or the doorpost; and his master shall bore his ear through with an awl; and he shall serve him for life."[3]

There are, then, in ancient law in general and the Old Testament in particular clear evidences of many different rituals of acquisition. In Ancient Israel one could signify a change of ownership by removing a sandal and handing it to another person. A new owner could indicate possesion by walking over a plot of land, or even by simply putting his foot on the land. Another act of acquisition could have been the calling of the name of the new owner over the land. Ownership of movable property could be signified by a mark. In the case of slaves, a ceremony accompanied the affixing of the mark.

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[1] Cf. II Sam 5:9; 6:2; 20:9; 21:3; Ex 15:16; Lev 26:12; Dt 28:10; 32:8 ff.; Is 4:1; Jer 32:34; 34:15; 25:29; 14:9; 15:16; Am 9:12; Ps 49:12 (Eng 11).

[2] Cf. Mendelsohn, Slavery in the Ancient Near East, p. 49.

[3] Cf. also Dt 15:17. Mendelsohn suggests that the hole would have been too small to serve as a visible mark, and was probably made in order to push through it a ring or a cord which held a tag. (Slavery in the Ancient Near East, p. 49.)

The validity of these various means of signifying acquisition and possession is not shaken by the absence of specific legislation concerning such acts. What is of importance for our understanding of the Israelite legal and economic customs is that these forms existed in popular legal thought, and therefore had legal effect at some time. The point which they have in common surely had a basis in actual law: Control of land must be formally given and received, and thus signified by some definite act.[1] That the definite act which signifies the transfer of land could be a formal contract--either oral or written--we have already seen. It is not possible to determine with certainty whether the symbolic acts of acquisition could substitute for the contract itself or not. We can be certain, however, that legal property transfer could not be a strictly non-verbal affair, but had to involve negotiations between the parties. But the presence of allusions to various rituals of acquisition in the Old Testament shows that there were many different means of traditio.

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To summarize. There are in the Old Testament traces of every essential element of the sale contract. While there are no fully complete contracts, the various contract formulae are found scattered throughout the Hebrew scriptures. These formulae show that the Hebrew contract, like the other contracts of the ancient world, contained an Operative Part describing the transaction. This description of the transaction could be either in the terms of a Purchase Formula, a Payment Formula, or both these forms combined. The Israelite contracts also contained a formal description of the property, the Property Specifications. It was essential that these specifications be unambiguous, which might mean that a detailed and elaborate description be given. In most cases, however, identification of the land by the name of the owner was a complete, unambiguous description. Another essential element of the contract was identification of the parties, usually only by name, but their patronymics could also be given.

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[1] Cf. also Daube, pp. 37-38.

Some means of validation was also necessary in the Israelite contract. Written contracts were validated by the names of the witnesses inscribed on the document; oral contracts were solemnized by the formal call to the witnesses and the ceremonial acceptance of that call by the witnesses. Though the oath was often used with contracts in the ancient world, there is little if any evidence that it was used in the Hebrew contracts. Another means of validation, royal attestation to contracts, common through the Ancient Near East, is unknown in the Old Testament.

Other formulae might also be included in the Hebrew contracts. One such phrase is "for the full price," a technical term in Israel and the Ancient Near East in general, signifying that the transaction is a full-fledged sale, and that no debt remains. And just as most contracts are dated, so there are traces of a "date formula" in the Old Testament contracts.

There are examples of written sale contracts in the Old Testament, but most of the contract formulae found in the Old Testament belong to oral contracts. These oral formulae reflect a contract ceremony which was conducted before the Israelite court assembled "in the gate." Because no completely documented contracts have been found, it is impossible to reconstruct the precise schema of the Hebrew contract--either oral or written--and thus it is not possible to reconstruct the pattern of the contract ceremony.

Certain rituals of acquisition could accompany the sale contract, but the legal transfer of land involved verbal discussions and either an oral or a written conveyance.

CHAPTER III FORMS RELATED TO THE SALE CONTRACT

Introduction

Up to this point we have examined only one type of contract, the sale contract, and treated but a single function of the Israelite law court, the notary function of the court in the legalization of property transfer. We undertake now an examination of some other types of Old Testament agreements related to the sale contract. Our aim is to determine what other Israelite agreements are to be classified as contracts and thereby determine which agreements were brought before the official legal body for verification and which agreements were private affairs. This investigation will enable us to determine some of the other activities of the Israelite law court, as well as the limitations of its jurisdiction. Our attention will be focused on three common Old Testament agreements, the procedure of hiring, the marriage agreement, and covenants.

The same methods will be applied to these types of agreement that have been applied to the sale contract. The initial step in each case is to describe the pattern of the agreement, then identify the formulae within that pattern. Extra-biblical formulae will be used, not as direct evidence for Israelite usages, but to suggest what one is to expect in the Hebrew agreements. Then on the basis of the forms of the agreements conclusions may be drawn about the Sitz im Leben of each agreement. Especially important will be a comparison of each agreement with the sale contract and an assessment of the relationship of these other agreements to the Hebrew law court.

1. Hiring

In addition to its references to sales and sale contracts, the Old Testament contains many examples of hiring contracts and numerous allusions to such agreements. Contracts of hire ordinarily include the hiring of animals, land, and other objects as well as the hiring of services from wage earners.[1] But since the hiring of services from individuals is the only form of hiring common to the Old Testament,[2] we shall confine our discussion to this type of hiring contract. The service contract may deal with the hiring of workmen,[3] of mercenaries,[4] or of prostitutes.[5]

The pattern of the hiring contract is very similar to the schema of the negotiations for sale, the employer corresponding to the buyer and the employee corresponding to the seller. The negotiations for the contract proceed with speeches by both parties until an agreement about the duties and the wages has been reached. The pattern is seen in some detail in the story of Judah and Tamar:

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[1] Daube, Studies in Biblical Law, pp. 18-19.

[2] Cf. de Vaux, pp. 169-70. There is a reference to the hiring of a beast in Ex 22:14 (Eng 15), to "paying the hire" (וַיִּתֵּן שְׂכָרָהּ) of a ship in Jonah 1:3, and to the hiring of a vineyard in So of S 8:11-12 and perhaps in Am 5:11.

[3] Gen 29:15 ff.; Ex 2:9; Jer 22:13; II Ch 24:12; Tobit 4:14; 5:3, 5; &etc.

[4] Ju 9:4; II Sam 10:6; I Ch 11:6-7; II Ch 25:6; &etc.

[5] Gen 38:15-18; Is 57:8; Ezk 16:4; Prov 6:26; &etc.

> When Judah saw her, he thought her to be a harlot, for she had covered her face. 16 He went over to her at the road side, and said, 'Come, let me come in to you,' for he did not know that she was his daughter-in-law. She said, 'What will you give me, that you may come in to me?' 17 He answered, 'I will send you a kid from the flock.' And she said, 'Will you give me a pledge, till you send it?' 18 He said, 'What pledge shall I give you?' She replied, 'Your signet and your cord, and your staff that is in your hand.' So he gave them to her, and went in to her, and she conceived by him." (Gen 38:15-18)

The common pattern of the employer initiating the procedure with a request to hire and the employee asking about the wages is seen clearly here, though the matter of the pledge is unusual. Ezekiel also shows us the normal pattern for hiring, at least for the hiring of a harlot, when he discusses an abnormal kind of harlotry. He says that men usually give gifts to harlots, but the harlot Jerusalem gave gifts to her lovers: "So you were different from other women in your harlotries: none solicited you to play the harlot; and you gave hire, while no hire was given to you; therefore you were different." (Ezk 16:34) Although most of our Old Testament examples of the negotiations for hiring show that the process was initiated by the employer, the discussion could also begin from the side of the employee. But whether the employer or the employee initiates the discussion, the formulae of the hiring contract follow a pattern of speeches by both parties until accord has been reached.

a. Employer Speeches--The addresses by the employer in the hiring process will be either a hiring request, an offer of wages, or some combination of the two. A complete employer speech in the story of Micah and the Levite contains both hiring request and wage offer: "And Micah said to him, 'Stay with me, and be to me a father and a priest, [hiring request] and I will give you ten pieces of silver a year, and a suit of apparel, and your living[wage offer].'" (Ju 17:10) Another example of wage offer and hiring request combined is found in the Samson story. The lords of the Philistines state specifically the wages they will pay Delilah for finding out the source of Samson's strength. (Ju 16:5) But the specific amount of the wages is not always given: "And Pharoh's daughter said to her, 'Take this child away, and nurse him for me, [hiring request] and I will give you your wages (שְׂכָרֵךְ׃).[wage offer]'" (Ex 2:9a)

Employer speeches may be complete, however, with only one of these two elements. In the transaction between Judah and Tamar (cf. above, p. 138), Judah first asks to "come in" to the woman. This first speech contains the hiring request. He makes his wage offer only in response to her question concerning the pay she is to receive. In the book of Tobit, when Tobias sets out to hire a man to accompany him to Media, he finds Raphael and says to him: "Can you go with me to Media? Are you acquainted with that region?" (Tobit 5:5b) Only later Tobit offers the wages: "But tell me, what wages am I to pay you--a drachma a day, and expenses for yourself as for my son?" (Tobit 5:14, cf. also 12:1-5) In this case, the hiring request and the wage offer were stated by two different individuals.

The wage offer may be formulated as a definite statement of the amount which is to be paid, or a general statement that the worker will be paid. It may also be formulated as a question or as an offer to pay whatever is asked. When Jacob begins his service with Laban, the latter says to him: "Because you are my kinsman, should you therefore serve me for nothing? Tell me, what shall your wages be?" (Gen 29:15) And when

Jacob has decided to leave Laban, Laban says again: "Name your wages, and I will give it." (Gen 30:28; cf. also Gen 29:27) Due partly to the mixture of sources and traditions in the story, Laban asks again: "What shall I give you?" (Gen 30:31a)

b. Employee Speeches--Tamar's reply to Judah's request to "come in to her" is typical of the addresses of the employee: "What will you give me, that you may come in to me?" (Gen 38:16b) The employee speeches are usually concerned with wages. The employee may ask--as here--what he is to be paid; he may state what wages he will accept; or he may request that he be paid.

When Laban asks Jacob what wages he wants for his service, Jacob replies: "I will serve you seven years for your younger daughter Rachel." (Gen 29:18) And when Jacob is leaving his father-in-law who asks what he shall be paid, Jacob replies that he need not be paid anything at all, if he will only be allowed to pass through the flock and take for himself every spotted and speckled sheep and every black lamb, and every spotted and speckled goat--these will be his wages (שָׂכָר). (Gen 30:31-33) Both these addresses are simple employee statements of what wages are acceptable.

When Jacob has fulfilled his part of the service contract with Laban, however, it is necessary for him to request his pay from the latter: "Give me my wife that I may go in to her, for my time is completed." (Gen 29:21)--And again: "Give me my wives and my children for whom I have served you, (עָבַדְתִּי אֹתְךָ בָּהֵן) and let me go; for you know the service (עֲבֹדָתִי) which I have given you." (Gen 30:26)

David's address to Achish is an employee speech by a mercenary:

"Then David said to Achish, 'If I have found favor in your eyes, let a place be given me in one of the country towns, that I may dwell there; for why should your servant dwell in the royal city with you?'" (I Sam 28:5)[1]

Albright has restored and translated an Akkadian letter from Shechem which is essentially a request for wages. The letter, dating from c. 1400 B. C., was written by a teacher to the parents of some of her pupils asking for wages due. It reads in part:

6	is there no grain nor oil nor wine(?)	ú-ul še'u ú-ul šamnu ú(!)-u [i karanu(?)]
	which thou canst send?	ša tu-ša-ab-ba-lu
	What is my offense	mi-nu-ú-um ḫi-ṭi
	that thou hast not paid [me] ?[2]	i-nu-ma ú-ul ta-pa-ul-[an-ni]

Only a few of the tales of hiring contracts preserve the formulae used by the parties to express their acceptance of terms. When Jacob says he will serve Laban seven years for his daughter Rachel, Laban says: "It is better that I should give her to you than that I should give her to any other man; stay with me." (Gen 29:19) And when Jacob makes his proposal that his wages be the spotted and speckled sheep, Laban replies, "Good! Let it be as you have said." (Gen 30:34) To Tobias' hiring request, Raphael responds, "I will go with you; I am familiar with the way...." (Tobit 5:6, cf. also 5:15) There are, then, many different ways of concluding the hiring contract, the agreement being expressed either by the employer or the employee.

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[1] For other wage requests, cf. II K 5:22 and Zech 11:12.

[2] W. F. Albright, "A Teacher to a Man of Shechem about 1400 B. C.," BASOR, 86 (1942), pp. 30-31.

Usually the hiring contract is an agreement between an employer and an employee, but there are examples throughout the Ancient Near East of a person hiring out his slave to another person. David Daube has suggested that there is at least one example of this type of hiring in the Old Testament, in the story of Reuben's mandrakes (Gen 30:14 ff.)[1] Rachel asks for some of Leah's mandrakes, and is rebuffed. So Rachel offers to hire Jacob to Leah for the night for the mandrakes. Then when Jacob comes in from the field, Leah says to him: "You must come in to me; for I have hired you with my son's mandrakes." (Gen 30:16) Leah's speech reflects a technical phrase, a "legal metaphor,"[2] from the hiring procedure. Stories concerning the hiring of someone's slave are, however, too rare in the Old Testament for us to determine whether or not this phrase in Gen 30:16 is in fact a formula of such a hiring process.

Some conclusions about the hiring contract are now justified. Though this type of agreement resembles in many ways the negotiations for sale, there are significant differences. Legal negotiations for purchase are followed by the solemnization of the agreement through a written or oral contract, but in the hiring procedure, the negotiations themselves constitute the agreement. There is no formal contract, even in the oral form that we have come to expect in the Old Testament Purchase agreements. We do not hear of court, witnesses or oath, or even of public negotiations for the hiring contracts. And even the formulae of the hiring process show by their great variety that the service agreements were less ceremonious than the legal process of the sale contract. We see from the way Jacob was cheated in the payment of his first contract with Laban (Gen 29:15-30) that the worker has no recourse to a solemnization of the agreement. Both parties are bound only by their words, and it is the worker who takes the greater risk.[1]

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[1] Daube, Studies in Biblical Law, pp. 19-20.

[2] Ibid., p. 20.

The jurisdiction of the Israelite court, then, did not ordinarily extend to the hiring process. While it can hardly be said that the hiring procedure was "informal," the service contract was a private agreement.

2. Marriage Agreements

Although the sociological aspects of Hebrew marriage have been examined repeatedly by scholars, the forms of the marriage agreement in their relationship to the other types of Old Testament contracts will bear fuller elucidation than they have been given.[2] The aim of the present discussion is to identify the formulae of the marriage process and thereby understand the Sitz im Leben of the agreement. One should then be able to determine whether or not the marriage agreement, like the sale contract, was a court process. Furthermore, by comparing the marriage formulae with the forms of the sale contract, one should be able to contribute a new perspective to the question of marriage by purchase. The issue of whether or not the Israelite marriage was the legal equivalent of purchase has been raised many times,[1] but the question has usually turned on whether the מֹהַר, "the marriage price," given to the father of the bride was actually a purchase price or a non-commercial gift. This question is, however, only one aspect of the issue of marriage by purchase. In order to determine the legal force of the מֹהַר and thus of the marriage agreement one must examine the full structure of the agreement and the formulae which are employed.

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[1] Cf. the injunctions to employers to be fair with employees: Lev 19:13; Dt 24:14 ff.; Jer 22:13; Tobit 4:14; &etc.

[2] Boecker has, however, identified and discussed several of the formulae of the marriage agreement. (Redeformen, pp. 174 ff.) We are dependent upon his investigation, but our discussion will add two new perspectives: 1) comparison of the marriage formulae with the forms of the civil contracts of the Old Testament, and 2) evaluation of the Hebrew marriage formulae in the light of some general Ancient Near Eastern evidence.

The first distinction to be drawn in outlining the pattern of the marriage process--and therefore the schema of the formulae in the ceremonies--is the broad division between the *betrothal ceremony* and the *marriage feast.*[2] These ceremonies are two distinct stages in the marriage which may be separated by several years (Gen 29:15-23) or by only a few days (Gen 34:8-26). The parties to the betrothal ceremony, as we see most clearly in Gen 34:6,8-12, are the guardian of the bride and either the father of the bridegroom or the bridegroom himself. But it was possible for the father of the groom to employ an intermediary (cf. Gen 24). The essential point is that the bride is not a party to the negotiations, but legally the object. The representative of the groom's family meets with the guardian of the bride to discuss the marriage, arrange the amount of the mohar, and to pay this sum. This pattern of the marriage process is seen clearly in Ju 14. Samson sees a girl at Timnah and asks his parents to get her for him as a wife (vs. 1). He and his parents go down to Timnah (vs. 5a), obviously for the betrothal, but the marriage is not completed then, for it is only "after a while" that he "returned to take her." (vs. 8a)

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[1] Millar Burrows, *The Basis of Israelite Marriage*, American Oriental Series, Vol. 15 (New Haven: American Oriental Society, 1938); P. Koschaker, "Eheschliessung und Kauf nach alten Rechten," *Archiv Orientalni*, XVIII 3 (1950), pp. 210-96; E. Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, Green & Co., 1944), especially pp. 94 ff.; O. J. Baab, "Marriage," *IDB*, Vol. III, pp. 278-87; Pedersen, *Israel*, Vols. I/II, pp. 547 ff.; and cf. the bibliography in Neufeld, pp. 273 ff.

[2] This distinction is commonly recognized and generally accepted. Cf. for example de Vaux, pp. 32 ff., and Baab, *IDB*, Vol. III, pp. 283 ff.

It has long been recognized that the legal conclusion of the Israelite marriage occurred in the betrothal ceremony when the mohar was paid,[1] not at the time of the marriage feast. While the Old Testament does recognize the difference between betrothed girls and married women, it is clear from the laws concerning the violation of betrothed virgins that such girls were considered the legal wives of their fiances. He who violates a betrothed virgin is to be stoned "because he violated his neighbor's wife (אֵשֶׁת רֵעֵ֑הוּ)." (Dt 22:24, cf. also 22:23-29) The structure of the formulae involved in the betrothal ceremony, as will be shown below, confirms the conclusion that the betrothal is the legally effective stage in the marriage transaction.

The marriage ceremony itself consists essentially of the act of deductio in domum mariti (Gen 29:23; 24:67),[2] but the act was often accompanied by elaborate celebrations and rituals. The transfer of the bride to the home of her husband was usually the occasion for a family feast. There is frequent reference to the rejoicing and even the elaborate garments which the feast called for.[1] But since the legal force rests with the betrothal ceremony, this examination of the formulae will be confined to those of the first stage of the marriage procedure.

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[1] Burrows, Basis of Israelite Marriage, pp. 19-21, and the literature cited on those pages; Neufeld, Ancient Hebrew Marriage Laws, pp. 94, 142-43; Boecker, p. 174.

[2] Neufeld, Ancient Hebrew Marriage Laws, p. 148.

There are many indications that the Old Testament distinction between betrothal ceremony and marriage celebration was common throughout the Ancient Near East. One of the Laws of Eshnunna, for example, parallels the Old Testament law which considers the violation of a betrothed maid equivalent to the violation of a married woman.[2] Another law from the same code states explicitly:

> If a man takes a(nother) man's daughter without asking the permission of her father and her mother and concludes no formal marriage contract with her father and her mother, even though she may live in his house for a year, she is not a 'housewife.' (*aššat*)[3]

These provisions and other related laws show that in order to become legally married in Eshnunna, a man called at the house of his prospective father-in-law, presumably with the customary gifts, and, being accepted, he paid him the *terḫatum*, the "bride money."[4] Other Near Eastern laws reflect the same pattern of betrothal ceremony followed some time later by the marriage.[5] Still other laws show that a formal agreement was essential to the legal marriage.[6] Thus the Babylonian betrothal was a formal ceremony[1] which legally concluded the marriage.[2]

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[1] Cf. Gen 29:22,27; So of S 3:11; Is 61:10; Jer 2:32; Ps 19:6 (Eng 5); 78:63; Joel 2:16; I Macc 9:39,41; Tobit 7:8-18.

[2] A. Goetze, *The Laws of Eshnunna*, *AASOR* XXXI (New Haven: American Schools of Oriental Research, 1956), No. 26, pp. 75-6.

[3] *Ibid.*, No. 27, p. 76.

[4] *Ibid.*, p. 80.

[5] Cf. the Code of Hammurapi, No. 130, *ANET*, p. 171, and the Lipit Ishtar Code, No. 29, *ANET*, p. 160.

[6] Cf. the Code of Hammurapi, No. 128, *ANET*, p. 171, and the Middle Assyrian Laws, No. 34, *ANET*, p. 183. Cf. also Pedersen, *Israel*, Vol. I/II, p. 547.

Though preliminary informal negotiations may have preceded it, the Israelite betrothal ceremony is officially begun by the formal proposal of marriage. The proposal is made by the bridegroom or his representative (usually his father), and addressed to the guardian of the bride.[3] There are only a few examples of this formula in the Old Testament, one of the best being Gen 34:8: "But Hamor spoke with them [Jacob and his sons], saying, 'The soul of my son Shechem longs for your daughter; I pray you, give her to him as a wife.'" (תְּנוּ נָא אֹתָהּ לוֹ לְאִשָּׁה:) And Shechem himself repeats the request: "But give me (וּתְנוּ־לִי) the maiden to be my wife." (Gen 34:12b) Another proposal of marriage is found in the reply of Jehoash to Amaziah's challenge: "A thistle on Lebanon sent to a cedar on Lebanon, saying, 'Give your daughter to my son for a wife' (תְּנָה אֶת־בִּתְּךָ לִבְנִי לְאִשָּׁה)...." (II K 14:9, II Ch 25:18) Bathsheba's request to Solomon on behalf of Adonijah is a more oblique formulation of the marriage proposal: "Let Abishag the Shunammite be given (יֻתַּן) to Adonijah your brother as wife."

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[1] Johns, Babylonian and Assyrian Laws, Contracts, and Letters, p. 124; A. van Selms, "The Best Man and Bride. From Sumer to St. John. With a new Interpretation of Judges 14-15," JNES, IX (1950), pp. 67-69.

[2] Lane reported a similar pattern among the modern Arabs. The marriage contract is generally verbal, consisting of a formal ceremony which might be performed several years before the marriage, but more commonly eight or ten days before the wedding. For a detailed description of the betrothal as well as the wedding celebration itself, cf. E. W. Lane, Arabian Society in the Middle Ages, edited by Stanley Lane-Poole (London: Chatto and Windus, 1883), pp. 230 ff.

[3] On this formula, cf. also Boecker, pp. 175 ff.

(I K 2:21) And there is an allusion to a "proposal" (πρᾶγμα) on behalf of Tobias for the hand of Sarah in Tobit 7:9.

There is then an amazing formal correspondance between the proposal of marriage and the Purchase Request directed to the seller.[1] Like the Purchase Request, the proposal of marriage may be formulated either directly by the interested party (Gen 34:12), or by another person on behalf of the petitioner (Gen 34:8; II K 14:9; I K 2:21). Both of these formulae are structured around the verb נתן , usually in the qal imperative, but the jussive is also found. Both forms commonly use two objects. The direct object in the Purchase Request is the property desired; the direct object in the marriage proposal is the bride.

Many Ancient Near Eastern parallels to the marriage proposal can be adduced. The record of the proposal is commonly given in the Aramaic marriage documents from Elephantine: "said Ananiaḥ...to Zakkum..saying: I have come to thy house and asked of thee (ושאלת מנך) the woman Yehoyishma (by name), thy sister, for marriage."[2] Another formulation is slightly different: "said Asḥor...to Mahseiah...as follows: I came to your house that you might give me your daughter Miptaḥiah in marriage." (למנתן לי [ל]ברתך מפטיה לאנתו)[3] These expressions are not themselves the proposals of marriage, but allusions to the proposals.

There are, however, many explicit quotations of marriage proposals from the Near East, many of which resemble the Old Testament formula very closely. A Babylonian marriage contract from the time of Nabonidus begins: "Nabû-nâdin-aḫi, son of Bêl-aḫê-iddin, grandson of Ardi-Nêrgal, spoke thus to Shûm-ukîn, son of Mushallimu, saying: 'Give my they daughter, Ina-Esaggil-banat, the maiden, to wife, for Uballitsu-Gula, my son.'"[1] Another Neo-Babylonian proposal is similar: "Dâgil-ilâni, son of Zambubu, spoke thus to Hammâ, daughter of Nêrgal-iddin, son of Babûtu, saying: 'Give me thy daughter, Latubashininni, she shall be my wife.'"[2]

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[1] Cf. above, Chapter I, 2, a, pp. 28-33.

[2] Kraeling, Aramaic Papyri, P 7, lines 1-3, p. 205. Cf. also P 14, lines 2-3, p. 295.

[3] Cowley, Aramaic Papyri, P 15, lines 2-3, pp. 44 ff. Cf. also Kraeling, Aramaic Papyri, P 12, lines 2-3, p. 143.

Several examples of the formal proposal of marriage are found in the Ugaritic texts. In response to Pabel's offer of gifts and request that he withdraw, Keret replies:

Nay, what's not in my house shalt thou give!	pd . in . bbty . ttn
Give my Lady Hurriya	tn . .y . mt̲t . ḥry
The fair, thy first-begotten[3]	n'mt . špḥ . bkrk

The form is identical to that of the Hebrew proposals, the imperative of *ytn* followed by two objects. A more ambiguous passage in the Nikkal poem also contains a proposal of marriage:

Yaraḫ, the illuminator of the sky,	16 ylak yrḫ nyr šmm . ʿm
sends (word) to Ḫiriḫbi, king of summer:	ḫr[ḫ]b mlk qẓ . tn nkl y
'Give (me) Nikkal! Yaraḫ will pay the bride price.'[4]	rḫ ytrḫ .

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[1] Cited by Johns, *Babylonian and Assyrian Laws, Contracts and Letters*, p. 125. Text published by Pater J. N. Strassmaier, *Babylonische Texte; Inschriften von Nabonidus* (Leipzig: Eduard Pfeiffer, 1889), No. 243.

[2] Cited by Johns, *Babylonian and Assyrian Laws, Contracts and Letters*, p. 125. Text published by Strassmaier, *Babylonische Texte: Inschriften von Nebuchodonosor*, No. 101.

[3] 4 *AQHT*, col iii, lines 142-144, cf. also col vi, lines 281 ff. The translation is Ginsberg's, *ANET*, p. 144.

[4] Text 77, lines 16-18. Our translation of the marriage proposal follows the interpretations by Gordon, *UL*, p. 64, and G. R. Driver, *Canaanite Myths and Legends* (Edinburgh: T. & T. Clark, 1956), p. 125. The juxtaposition of the proposal and the offer to pay the bride price, found in the Old Testament (Gen 34:11-12) as well as Ugarit (Cf. 4 AQHT, col iv,

(cont'd.)

Boecker observed that the proposal of marriage in the Old Testament might be accompanied by the offer of the bride price.[1] But he found only one example of this formula in the Old Testament, Gen 34:11-12: "Shechem also said to her father and to her brothers, 'Let me find favor in your eyes, and whatever you say to me I will give. 12 Ask of me ever so much as marriage present (מֹהַר) and gift, (וּמַתָּן) and I will give according as you say to me; only give me the maiden to be my wife.'" But it is only fortuitous that no more examples of such an offer have been preserved, since the amount of payment must be discussed if a price is to be paid. There is, however, at least one allusion to the discussion of the amount of the mohar. Saul's suggestion through his servants that he would only ask for a hundred foreskins of the Philistines from David as a marriage present (מֹהַר) for Michal (I Sam 18:20-27) indicates that it was the custom for the bridegroom (or his representative) to offer to pay the price and the father of the bride to set the amount.

A very close Ugaritic parallel to the offer of the mohar in Gen 34 is found in Keret's vow:

If Hurriya to my house I take,	203	hm . ḥry . bty
Bring the lass into my court,		iqḥ . aš'rb . ǵlmt
Her double I'll give in silver,		ḥẓry . ṯnh . k!spm
And her treble in gold.[2]		atn . w . ṯlṯth . ḫrṣm

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[4](cont'd.) lines 200 ff.) supports this interpretation. For another interpretation of the entire poem and a different translation of these lines, cf. A. Goetze, "The Nikkal Poem from Ras Shamra," JBL, 60 (1941), pp. 353-74.

[1] Redeformen, p. 175.

[2] 4 AQHT, col iv, lines 203-206. The translation is Ginsberg's ANET, p. 145.

It has already been seen that the Nikkal poem contains a proposal followed immediately by an offer to pay the bride price. The lines from the poem which we cited as an example of the proposal (cf. above, p. 149) are followed by a more detailed offer of the bride price. Yaraḫ instructs his intermediary Ḫiriḫbi:

And I will pay the marriage price	19	. wat tmhrh la
for her to her father,		bh . alp ksp . wrbt ḫ
A thousand (shekels) of silver		rṣ . išlḥ ẓhrm iq
and ten thousand of gold.		nim .
I'll send gems (and) lapis lazuli.[1]		

One may then conclude with confidence that there was an offer of the bride price in the course of the Old Testament betrothal ceremony, but there are too few examples to generalize about the formula. It may be observed, however, that the offer of the mohar in the betrothal corresponds to the Buyer Speech in the legal negotiations,[2] both of them consisting of generous offers of payment. Furthermore, as the Buyer Speech is often connected closely to the Purchase Request, so the offer of the mohar is bound to the proposal of marriage.

After the discussion of the amount of the mohar the parties to the betrothal would come to terms, after which the price would be paid and the agreement completed. It is possible, though by no means certain, that there were stereotyped expressions of this agreement to terms. When Jacob says he will serve Laban seven years for the hand of Rachel, Laban replies: "It is better that I give her to you (טוֹב תִּתִּי אֹתָהּ לָךְ)

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[1] Text 77, lines 19-22. It is even possible that the offer of the bride price continues through lines 23-24.

[2] Cf. above, Chapter I, 5, pp. 53-58.

than that I should give her to any other man...." (Gen 29:19)[1] But whatever expressions may have been used to signify agreement to the conditions of the marriage, the agreement would have to be solemnized formally.

Most of the cultures of the Ancient Near East have left material examples of this solemnization of the marriage agreement in the form of written marriage contracts. Many of the Aramaic contracts from Elephantine are marriage contracts which are schematically identical with the conveyences. The difference lies, of course, in the Operative Parts of the respective contracts. Furthermore, marriage contracts from throughout the Ancient Near East generally are cast in frameworks similar to the contracts of sale, exhibiting their individual characteristics primarily in the Operative Parts. These marriage contracts note that the marriage price has been paid and that the bride is promised to the groom. Usually conditions of the agreement are set forth, such as penalties for divorce or restrictions against the groom's taking other wives. Such a statement of conditions is found in a text from Nuzi: "If ^{f}Beltakkadummi bears a son, Hurauzzi (20) another wife shall not take. If ^{f}Beltakkadummi a son does not bear, Hurauzzi may take another wife."[2] One of the Neo-Babylonian marriage contracts cited by Johns also has a stipulation concerning further marriage of the groom: "The day that Dâgil-ilâni shall take a second wife, Dâgil-ilâni shall give Latubashinni a mina of silver and she shall go back where she was before."[3] These texts are cited only as examples of one possible condition which might be included in the marriage contract. In actual practice, the contracts might contain several conditions, as well as some concrete statement that the marriage agreement has been settled.

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[1] We have seen above (Cf. p. 141) that this sentence also expresses agreement to the terms of a work contract. Cf. also Tobit 7:8-15.

[2] Speiser, "Kirkuk Documents," AASOR, X, transliteration and translation on pp. 59-60. The text is HSS, V, 80.

[3] Johns, Babylonian and Assyrian Laws, Contracts, and Letters, p. 125. The text is in Strassmaier, Babylonische Texte: Inschriften von Nebuchodonosor, No. 101.

The question now is whether or not there are traces of the marriage contract as such in the Old Testament. Only once in the Old Testament, and that in the late apocryphal book of Tobit, do we find a clear reference to a *written* marriage document. Raguel calls his daughter Sarah and gives her to Tobias to be his wife with the words: "'Here she is; take her according to the law of Moses, and take her with you to your father,' And he blessed them. 14 Next he called his wife Edna, and took a scroll and wrote out the contract (ἔγραψεν συγγραφήν); and they set their seals to it." (Tobit 7:13-14) There are, however, some slight traces of oral marriage contracts in the Old Testament. Laban's charge to Jacob at Mizpah states conditions of a marriage much like a written contract: "If you ill-treat my daughters, or if you take wives besides my daughters, although no man is with us, remember, God is witness between you and me." (Gen 31:50)[1] The context is, of course, the covenant between the two men. And Dinah's brothers pronounce what can only be considered one of the conditions in the marriage agreement with Hamor: "Only by this (אַךְ־בְּזֹאת) will we consent to you: that you will become as we are and every male of you be circumcised. 16 Then we will give our daughters to you, and we will take your daughters to ourselves...."

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[1] On this passage, cf. above, p. 115. Gunkel had already observed that this passage is a sentence from the *Ehekontrakt*, resembling the Near Eastern contracts of marriage. (*Genesis*, pp. 312-13.) Cf. also Gerstenberger, p. 92.

(Gen 34:15-16)

These passages, however, are only references to the conditions which were included in the marriage contract. Definite statements of the contracted agreement itself are more difficult to find in the Old Testament. The Aramaic marriage texts from Elephantine record the formula spoken by the groom to seal the agreement: "She is my wife and I her husband from this day for ever."[1] Neufeld speculates that a similar formula was used in the solemnization of the Israelite marriage agreement. He suggests that whatever form of solemnity was used to make a binding contract of marriage, "the formula would in all probability be of the simplest nature such as 'Behold thou art my wife' or 'She is my wife and I am her husband.'"[2] Though the similar formulae in the Aramaic marriage contracts make this suggestion plausible, it remains pure conjecture.[3]

Some have suggested that the references to marriage as a covenant are to be connected with a written marriage contract,[4] but this by no means follows. Nowhere in the Old Testament is covenant specifically identified as a written document. (Cf. however Ex 24:7.) It is possible, though, that the texts which connect marriage with covenant do refer to the solemnization of the marriage, the statement of the legally effective agreement. While marriage is often used as a symbol of the covenant between Yahweh and Israel,[1] there are only three passages in which one might consider marriage described as a covenant, Mal 2:14; Ezk 16:8; Prov 2:17. It is said that Yahweh no longer accepts offerings, "Because Yahweh witnessed between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant (אֵשֶׁת בְּרִיתֶךָ)." (Mal 2:14)[2] Also, the marriage condition of Gen 31:50 (cf. above, p. 153) was in the framework of a covenant (בְּרִית vs. 44) between Jacob and Laban.

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[1] Kraeling, Aramaic Papyri, P 2, lines 3-4, p. 143. Cf. also Kraeling P 7, line 3, p. 205; P 14, lines 3-4, p. 295; Cowley, Aramaic Papyri, P 15, line 4, p. 46. A similar formula is used in an Aramaic marriage contract from the second century A. D. Cf. S. A. Birnbaum, "The Kephar Bebhayu Marriage Deed," JAOS, 78 (1958), pp. 12-18.

[2] Neufeld, Ancient Hebrew Marriage Laws, p. 155.

[3] De Vaux (p. 33) suggests that Saul's statement to David in I Sam 18:21 belongs to the solemnization of the marriage between David and Michal: "Today you shall be my son-in-law." The textual difficulties with this verse notwithstanding, there are difficulties with de Vaux's suggestion. Saul's statement precedes even the preliminary discussions of the marriage, and is to be understood as an initiation of the discussion rather than the solemnization of the agreement. The solemnization must follow the discussion of terms.

[4] Cf. e. g. Boecker, p. 177.

Whatever name might be applied to the formality of concluding the marriage agreement in the betrothal ceremony, this agreement--like the sale contract--might be validated either by a written document or by a formal ceremony of confirmation. Probably the latter was the more common type in ancient Israel.

After the conclusion of the marriage agreement in the betrothal ceremony, the bride and groom were legally married, though several steps remained in the marriage process. It has been seen that the wedding feast and the physical consummation of the marriage could follow the betrothal ceremony by several days or several years. So when the time arrived for the consummation of the marriage, the groom would come to the house of the bride to make his formal request for the bride.[1] This formula is to be distinguished from the formal proposal, for though the two are similar in form they differ in purpose and, of course, position in the marriage process. Jacob addresses such a request to his father-in-law: "Give me my wife (הָבָה אֶת־אִשְׁתִּי) that I may go in to her, for my time is completed." (Gen 29:21)[2] The bridegroom addresses himself to the head of the bride's family. (Cf. also II Sam 3:14 and Gen 30:26.) The groom then takes (לקח)[3] his bride.

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[1] Hos 2:21,22; Jer 31:31 ff., &etc.

[2] The context of this reference to marriage in connection with covenant is a condemnation of faithless husbands.

One other formula found in the course of the marriage process is the blessing.[4] The blessing belongs at the point in the ceremony when the bride is handed over to the groom. In Tobit 7:13 the blessing is pronounced by the father of the bride; in Gen 24:60 it is pronounced by the family of the bride; and in Ru 4:11-12 it is given by the elders and all the people at the gate. The blessing usually expresses the hope for numerous progeny: "And they blessed Rebekah, and said to her, 'Our sister, be the mother of thousands of ten thousands; and may your descendants possess the gate of those who hate them.'" (Gen 24:60)

An excellent parallel to these Old Testament marriage blessings is found in the legend of king Keret. When Keret has secured the hand of Hurriya, Baal asks El to bless Keret:

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[1] This form is discussed also by Boecker, pp. 177-78, under the heading die Aufforderung zur Hergabe der Braut.

[2] This sentence is also a phrase from the hiring process, cf. above, p. 140 .

[3] For examples of this verb applied to marriage, cf. Gen 12:19; 24:51; 28:2; Dt 24:1; Jer 16:2; Ezk 44:22; Hos 1:2 ff.; &etc.

[4] Also noted by Neufeld, Ancient Hebrew Marriage Laws, p. 143, and discussed by Boecker, pp. 178-9.

El blesses Keret,
[Beatifi]es the Beloved, Lad of El
'The wo[man thou ta]k'st, O Keret,
The woman thou tak'st into thy house,
The maid thou bring'st into thy court,
Shall bear seven sons unto thee;
Yea, eight she'll produce for thee.[1]

The blessing continues for more than twenty lines, being almost exclusively concerned with the numerous children which Hurriya is to bear to Keret.

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This investigation of the formulae of the marriage agreement confirms the conclusion that Israelite marriage was the legal equivalent of the purchase. The similarity of the formulae in both ceremonies as well as the pattern of the negotiations in both cases supports this conclusion. The fact that the bride herself is not a party to the agreement but rather the object is one of the strongest arguments for the idea of marriage by purchase throughout the Ancient Near East, including Israel.[2] It is consistent with this pattern that the Old Testament calls the husband the בַּעַל , the "owner" of the wife,[3] and uses the verb בעל , "to own, rule over, or take possession of," in reference to taking a wife.[4]

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[1] KRT B, (Text 128), col ii, lines 19 ff. The translation is Ginsberg's ANET, p. 146.

[2] Koschaker concluded: "Die Frau ist bei Schliessung der Muntehe Objekt des Geschäfts. Der Rechtsakt vollzieht sich zwischen ihrem Vater und dem Mann über sie, d. h. ohne ihre Mitwirkung. Ihr Wille ist daher für die Eheschliessung irrelevant, nicht anders als wenn A von B eine Kuh kaufte." (Archiv Orientální, XVIII 3 (1950), p. 216).

[3] Ex 21:3,22; Dt 24:4; II Sam 11:26; Prov 12:4; Hos 2:13; &etc. The noun בַּעַל frequently designates the owner of an object. Cf. Ex 22:28 (שׁוֹר), and 22:7 (בַּיִת).

[4] Dt 21:13; 24:1; Is 62:5; &etc.

But to say that the marriage is the legal equivalent of purchase is not necessarily to conclude that the wife was considered a chattel. Boissier's generalization is clearly too broad: "Chez les peuples sémitiques le mariage a toujours été regardé comme une affaire purement pécuniaire et qu'on a comparée avec raison à une location."[1] As both M. David[2] and Koschaker[3] have pointed out, patterns of legal procedure do not necessarily reflect the thought of a people. Ideas which have long been obsolete may be reflected in customs and laws which continue to be practiced. Furthermore, even in the legal structure of Ancient Near Eastern marriage there are some factors which mitigate the commercial considerations. The possibility of divorce initiated by the wife, mentioned in many marriage contracts,[4] tends to make the wife a party to the agreement. (Where the wife has the power to dissolve the agreement, her approval is necessary to conclude the agreement.) The Old Testament, however, is silent on this point. Furthermore, the other legal conditions expressed in the agreement for the benefit of the wife (e. g. Gen 31: 50) tend to subdue the economic aspect. Nonetheless, formally and therefore legally the Hebrew marriage agreement was an economic contract.

The more important question for this study of the contract formulae concerns the Sitz im Leben of the marriage agreement. The question to be answered is whether the betrothal ceremony was a public affair before the Israelite court or a private transaction. One view is expressed by Neufeld: "Matrimony, being a private affair of the parties and of their respective families, required no public ceremony, religious or otherwise, for its legalisation."[1] Boecker, on the other hand, insists that the process which concludes the marriage agreement takes place "vor dem Forum der Ortsgerichtsbarkeit."[2] Both sides of this argument should be considered. One argument for the private nature of the betrothal is the fact that none of the betrothal ceremonies of the Old Testament are explicitly described as being before the court. (Note, however, that this is an argument ex silentio.) But some of the Ancient Near Eastern marriage contracts expressly state that the groom came to the house of the bride to propose the marriage: "I have come to thy house (אנה אתית על[בי]תך) and asked of thee the woman Yehoyishma...."[3] It must be remembered, however, that these extra-biblical agreements were solemnized with a written contract which did not necessarily require the legal notarization of the court. But even these extra-biblical contracts are affairs of public concern, in view of the list of witnesses which they invariably include.

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[1] Alfred Boissier, Recherches sur Quelques Contrats Babyloniens (Paris: Ernest Leroux, 1890), p. 3.

[2] M. David, "The Codex Hammurabi and its relation to the Provisions of Law in Exodus," OTS, VII (Leiden: E. J. Brill, 1950), pp. 177-8.

[3] Archiv Orientální, XVIII 3 (1950), p. 234.

[4] Cf. among others the Aramaic marriage contracts from Elephantine, and Yaron, Law of the Aramaic Papyri, pp. 44 ff.

Most of the evidence, however, supports the conclusion that the Israelite marriage agreement was a full-fledged oral contract which had to be solemnized before the assmebled legal body in the gate. As in the case of the oral sale contract, it is the notarization of the court which formalizes an oral marriage agreement. While some of the preliminary negotiations for marriage might have been carried on privately, the betrothal ceremony would have taken place publically. And although the marriage feast was primarily a family celebration, the legally effective step in the marriage process would have been public. Marriage is never a strictly private affair, nor even just a family matter, else contracts and formal ceremonies of legalization would be superfluous. That the marriage conclusion in the betrothal ceremony was a public legal affair is seen first of all by the purpose of the ceremony. The purpose of the solemnized legal agreements, including marriage agreements, is to prevent public strife. This purpose was carried out by the Hebrew law court. Furthermore, the formulae of the marriage process reflect a formal ceremony before the court. The formulae of the marriage agreement so parallel those of the sale contract that one must conclude that the ceremonies themselves are also parallel: Both occur before the court "in the gate." The marriage ceremony in Ancient Israel, then, was not a "religious" ceremony requiring any of the apparatus or personnel of the cult,[1] but a "civil" agreement before the legally responsible citizens of the community. So the jurisdiction of the Hebrew law court extended to the Israelite marriage ceremony.

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[1] Neufeld, Ancient Hebrew Marriage Laws, p. 149. Cf. also Pedersen, Israel, Vol. I, p. 67.

[2] Boecker, p. 174.

[3] Kraeling, Aramaic Papyri, P 7, line 3, p. 205. Cf. also Cowley, Aramaic Papyri, P 15, line 3, pp. 45-6, &etc.

3. Covenants and Contracts

The question of the relationship of the Old Testament covenants to the Hebrew contracts must be raised at this point.[1] The aim of this discussion is to determine the relationship of covenantal forms to contract forms and thereby ascertain whether or not these agreements have the same Sitz im Leben. The question of whether or not the covenant formulae have developed out of legal agreements solemnized before the Israelite court is important in understanding the history of the Old Testament covenant.

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[1] Cf. also Neufeld, Ancient Hebrew Marriage Laws, p. 148 .

These questions can only be answered by investigating the various types of Old Testament covenants and elaborating the structure and formulae of these covenants in comparison with the contract forms. Recent studies, notably those of Baltzer[2] and Mendenhall,[3] have drawn upon the extra-biblical treaty forms in explaining the forms of the Old Testament covenant ceremony. These sources must be considered, but our study will proceed by looking first at the covenants in the Old Testament which are concluded between two human parties (either individuals or groups) and then, having seen the pattern and the formulae of these agreements, turn to a study of the covenant between God and man. A new perspective on the covenant relationship between Yahweh and Israel should be gained from the covenants among human parties.

It has been characteristic of the scholarly treatments of covenant in the Old Testament to concentrate on the covenant between Yahweh and his people Israel,[1] for this covenant stands at the center of the Israelite ideas about the relationship between God and man. But the Old Testament speaks of covenants other than the one which binds Israel and Yahweh together. In concluding his study of the covenant formula in the Old Testament, K. Baltzer remarks that his entire study has been devoted to only one kind of covenant, and that there are many other types.[2]

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[1] The question of the Old Testament covenant is, of course, a comprehensive issue in itself. We make no pretense of treating here even all the form critical problems involved--to say nothing of the wide range of other issues included in the question of covenant--but raise at this point only one aspect of the subject.

[2] K. Baltzer, Das Bundesformular.

[3] George E. Mendenhall, Law and Covenant in Israel and the Ancient Near East (Pittsburgh: The Biblical Colloquium, 1955). Cf. also Mendenhall, "Covenant," IDB, Vol. I, pp. 714-23.

The Old Testament category "covenant" is then a broad category. It is not by accident that the English "covenant" and the German *Bund* have been applied freely to God's covenant with Israel as well as agreements among men, for the Hebrew בְּרִית itself is applied broadly to several kinds of agreements. Both the wide application of the term בְּרִית and the major categories of covenant are seen clearly in the prohibition of

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[1] An important early attempt to trace the history of the "covenant idea" in Ancient Israel was that of Richard Kraetzschmar, *Die Bundesvorstellung im Alten Testament* (Marburg: N. G. Elwert'sche Verlagsbuchhandlung, 1896). Kraetzschmar begins his study with a discussion of the covenants among men, as we begin ours. Cf. also the comprehensive study by Paul Karge, *Geschichte des Bundesgedankens im Alten Testament* (Münster: Verlag der Aschendorffschen Buchhandlung, 1910.)

More modern studies have focused attention on the formulae of the covenant and the covenant ceremonies in Israel. Cf. Baltzer, Part I. Cf. also Hans Wildberger, *Jahwes Eigentumsvolk* (Zürich: Zwingli Verlag, 1960), especially pp. 40-73, 113 ff.; Hans-Joachim Kraus, *Gottesdienst in Israel. Studien zur Geschichte des Laubhüttenfestes* (München: Chr Kaiser Verlag, 1954), especially pp. 49 ff., 77 ff.; S. Mowinckel, *Le Décalogue* (Paris: Librairie Felix Alcan, 1927), especially pp. 19 ff.; Walther Zimmerli, "Ich Bin Jahwe," in *Geschichte und Altes Testament* (Tübingen: J. C. B. Mohr, 1953), pp. 179-209.

Walther Eichrodt's understanding of the idea of covenant as the cornerstone of Old Testament theology is well known: *Theology of the Old Testament*, Vol. I, translated by J. A. Baker (Philadelphia: The Westminster Press, 1961). Cf. also Artur Weiser, *Glaube und Geschichte im Alten Testament* (Stuttgart: W. Kohlhammer Verlag, 1931), pp. 57 ff.

[2] Baltzer, p. 97.

Ex 23:32: "You shall make no covenant (בְּרִית) with them [the inhabitants of the land] or with their gods." The major division among types of covenant is then on the basis of the parties to the agreement: Covenants among men distinguished from covenants between human and divine partners.[1]

a. Covenants among Men--To signify the covenants among men as "secular" covenants would be an unwarranted application of modern western ideas to Old Testament practices.[2] To use the classification "covenants among men" to include all Old Testament covenants besides those between God and man is only to follow the Hebrew distinctions themselves. But even the covenants between human partners cannot be classified as "secular" or "profane," for such agreements were made effective by an oath which was usually an appeal to God.[3]

Indeed, the heart of any covenant between men is an *oath formula* which constitutes the covenant, making the agreement effective at the moment of its pronouncement. That this is so can be demonstrated from the Old Testament texts concerning covenants.

The first indications that an oath formula stands at the center of the covenant conclusion are the numerous passages in which covenant and oath are parallel terms. This is seen quite clearly in the Yahwistic tradition of the covenant between Abimelech and Isaac. Abimelech and his companions propose an agreement: "Let there be an oath between you and us, (אָלָה בֵּינוֹתֵינוּ בֵּינֵינוּ וּבֵינֶךָ) and let us make a covenant with you (וְנִכְרְתָה בְרִית)...." (Gen 26:28a) So the following morning "they took oath with one another." (וַיִּשָּׁבְעוּ אִישׁ לְאָחִיו) (vs. 31) The same parallel is found in Gen 21:31-32 (cf. also vss. 22-24). The covenant between Israel and the Gibeonites is described similarly: "And Joshua made peace with them, and made a covenant with them, (וַיִּכְרֹת לָהֶם בְּרִית) to let them live; and the leaders of the congregation swore to them (וַיִּשָּׁבְעוּ לָהֶם)." (Jos 9:15, cf. also vss. 18-20) Covenant and swearing are also equated in Jehoida's agreement with the captains of the Carites and of the guards: "He made a covenant with them (וַיִּכְרֹת לָהֶם בְּרִית) and put them under oath (וַיַּשְׁבַּע אֹתָם) in the house of the Lord, and he showed them the king's son." (II K 11:4b) Furthermore, Ezekiel speaks of a covenant made by the king of Babylon: "And he took one of the seed royal and made a covenant with him, (וַיִּכְרֹת אִתּוֹ בְּרִית) putting him under oath." (וַיָּבֵא אֹתוֹ בְּאָלָה) (Ezk 17:13a)[1]

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[1] *KB* also draws this as the major division for the application of the term בְּרִית : "Abmachung, Vereinbarung, Bund zwischen Menschen," and "Bund zwischen Gott und Menschen." (pp. 150-1) And the distinction is commonly accepted. Cf. Eissfeldt, *Einleitung in das Alte Testament*, pp. 21-3.

[2] But cf. Kraetzschmar's distinctions, "Der Bund auf profanem Gebiete," and "Die Bundesvorstellung auf religiösem Gebiete."

[3] Cf. Mendenhall, *IDB*, Vol. I, p. 714; and *Law and Covenant*, pp. 26-7. Cf. also M. H. Pope, "Oaths," *IDB*, Vol. III, p. 576; and Pedersen, *Der Eid bei Semiten*, pp. 21-51.

These texts, however, only show that an oath formula was at the center of the Old Testament covenants between human partners. Examples of the formula itself must be adduced and its structure analyzed. Not all oath formulae, of course, were used in covenant ceremonies. We should therefore glance briefly at the oath formula in general and then look at the oath formulae which were used in covenantal agreements.

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[1] The same parallelism is also found in Ezk 17:16, 18-19.

The full oath formula includes a conditional self curse followed by the statement of what is sworn, the contents of the oath. Full oath formulae, however, are seldom found. The formula is very commonly abbreviated sharply either because of the fear which the words of the curse induce,[1] or simply because the expressions have been worn down by repeated use. Nevertheless, Ruth's vow to Naomi includes both the conditional curse and the expression of what is sworn. It is a full oath formula: "May the Lord do so to me and more also if aught but death parts me from you." (Ru 1:17b)[2] The expression, "may the Lord do so to me and more also," is, however, but one possible formulation of the curse element. Many different stereotyped expressions are employed in the conditional curse part of the oath. This element may be a detailed list of curses,[3] the calling of God as witness,[4] or the common phrase, "As the Lord lives."[5] Often the expression of the self curse is so abbreviated or stylized that it is almost unrecognizable, but it usually stems from a self curse in the name of God.

The second element of the oath, the statement of what is sworn, determines whether the oath is assertory or promissory. An assertory oath is the avowal of the existence of a fact or the truth of a statement, an asseveration. The vow by oath to do something in the future is a promissory oath.[1] While the first element of the oath formula may employ many different expressions, there are few if any stereotyped phrases for the second, or content, part of the oath. What is sworn will of course vary with each situation.

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[1] Pope, IDB, Vol. III, pp. 576-7.

[2] Cf. also I Sam 3:17; 14:44; 25:22; II Sam 3:9,35; I K 2:23.

[3] Nu 5:19-28; Ps 7:4-5; 137:5-6.

[4] Cf. above, p. 114.

[5] Ju 8:19; I Sam 14:39, 45; 19:6, &etc. On this expression, cf. Moshe Greenberg, "The Hebrew Oath Particle Hay/He," JBL, 76 (1957), pp. 34-39. Cf. also Pope, IDB, Vol. III, p. 577.

There are traces of both elements of the oath formula in the conclusion of covenants among groups and individuals in the Old Testament. Jonathan's speech in the formation of his covenant (בְּרִית , I Sam 20:8) with David includes two "self curse" elements and a detailed elaboration of the promise which is sworn, the contents of the covenant. He says both, "The Lord, the God of Israel, be witness!"[2] (I Sam 20:12) and "The Lord do so to Jonathan, and more also...." (vs. 13) The content of the oath is the promise to help David. Jonathan then asks David to swear to him and to his house. The self curse element in David's oath to Jonathan is attested only by allusion: "And Jonathan made David swear again by his love for him...." (לְהַשְׁבִּיעַ ... בְּאַהֲבָתוֹ אֹתוֹ) (I Sam 20:17a) Finally both parts of the mutual oath--the covenant--are summarized: "Then Jonathan said to David, "Go in peace, forasmuch as we have sworn both of us (נִשְׁבַּעְנוּ שְׁנֵינוּ אֲנַחְנוּ) in the name of the Lord, saying, 'The Lord shall be between me and you, and between my descendants and your descendants, for ever.'" (I Sam 20:42a) The curse element is taken "in the name of the Lord;" the content of the oath is the promise of mutual faithfulness.

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[1] On the oath in general in the Old Testament, cf. Friedrich Horst, "Der Eid im Alten Testament," in Gottes Recht (München: Chr Kaiser Verlag, 1961), pp. 292-314. On the promissory oath, cf. pp. 292-4.

[2] Cf. above, p. 115, on "be witness" which is not in the MT.

Both elements of the oath formula are reflected in one account of the covenant between Abraham and Abimelech. The latter says: "Now therefore swear to me here by God (הִשָּׁבְעָה לִּי בֵאלֹהִים) that you will not deal falsely with me or with my offspring or my posterity....24 And Abraham said, 'I will swear.'" (אָנֹכִי אִשָּׁבֵעַ:) (Gen 21:23-24) The self curse was taken "by God;" the content element was the promise not to deal falsely with one another. One can see from this text that such a brief response as Abraham's statement, "I will swear," taken in connection with a request such as Abimelech's, could form a full oath. This is analogous to the modern American trial witness who swears simply by saying, "I do," in response to the question, "Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

When the tribes of Israel unite against Benjamin, it is said, "Now the men of Israel had sworn (נִשְׁבַּע) at Mizpah, 'No one of us shall give his daughter in marriage to Benjamin.'" (Ju 21:1) This sentence can only be the content element of the covenant oath, which the tribes swore "by the Lord." (בַּיהוָה , Ju 21:7)

It has been seen that one type of oath formulation closely resembles the witnessing formula, for it is in fact calling God to witness.[1] Though such expressions formally resemble the witnessing formulae, they are actually oaths, for God is called upon to witness and--implicitly--to condemn if the assertion is not true or the promise is not kept. Such an oath as the basis of a covenant--though the term בְּרִית is not used here--occurs in Ju 11:10: "And the elders of Gilead said to Jephthah,

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[1] Cf. above, p. 114.

'The Lord will be witness between us; we will surely do as you say.'" The story of the covenant between Jacob and Laban at Mizpah (Gen 31:43-54) also tells that one of the parties called upon God as witness. Though the passage is confused,[1] it is possible to discern some of the elements of the oath in the covenant process. The curse element is seen in the calling of God as witness (vs. 50), and in asking Yahweh to watch (vs. 49). The content of what is sworn to is also given (vss. 50,52). Furthermore, it is stated explicitly that Jacob swore (וַיִּשָּׁבַע) by the Fear (בְּפַחַד) of his father Isaac. (vs. 53)

To summarize our results thus far: The oath formula stands at the heart of the covenants among human partners in the Old Testament. The terms oath and covenant often are used as synonyms. The ordinary oath formula includes two elements, a conditional self curse, and the statement of what is sworn. Examples of this pattern are found in many oaths which constitute covenantal agreements among human partners. There are several different stereotyped formulae for the self curse element of the oath, but the content part of the oath varies considerably to fit each situation.

There are indications that the covenant centered around the oath was by no means unique to Ancient Israel. What can only be classified as an international treaty between Niqmepa, king of Mukiš and Alalaḫ, and Ir-IM, king of Tunip, begins with the superscription, "Tablet of the oath of the gods...." ([tup-p]u ša ni-iš ilāni(meš))[1] In a final section of the treaty dealing with provisions for its abrogation we read, "according to the terms from the oath which they shall indeed free (me?)" ([a]-na šumu(ú) a-wa-te(meš) iš-tu ma-mi-ti lu-ú i-pá-aš-šar-[ru-ni])[2] The treaty closes with the invocation of the curse of the gods on anyone who thwarts the words of the agreement.

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[1] Cf. above, p. 115, footnote 2.

Another treaty from Alalaḫ is classified as tup-pi ri-ik-ši, which Wiseman explains as "the written declaration that the parties have sworn an oath of the gods."[3] Like the previous treaty, this text closes with an invocation of the curse of the gods upon whoever transgresses the words of the document.

One of the Akkadian letters from Mari speaks of an agreement between Iaggid-Lim, first king of Mari, and Ilâ-kabkabû, king of Assyria as an "oath of the gods." (ni-iš ilim)[4]

Ancient Near Eastern treaties, then, like the Old Testament covenants between human parties, were essentially oaths either sworn between the two parties or forced upon the weaker party by the stronger,[5] though these treaties developed very elaborate and more or less stereotyped patterns. This conclusion is borne out not only by the fact that such agreements are often identified as oaths, but also by the structures of the treaties themselves and the formulae which they employ. One can see both elements of the oath formula in these treaties. They generally contain a section which calls upon the gods as witnesses to the covenant and another section which calls for the curses of the gods upon the one who violates the covenant as well as the blessings of the gods upon those who maintain the agreement. The Hittite suzerainty treaties, for example, close with a formula which calls the gods as witnesses and a cursing and blessing formula: "Let these [gods] be witnesses to this treaty and to the oath."[1] Then follow the curses and blessings which also set oath and treaty in parallel. The invocation of the gods as witnesses and the curses and blessings, though elaborate formulae, may still be recognized as the curse portion of the oath formula. The bodies of the treaties consist essentially of the stipulations of what is sworn, the "content" element of the oath formula. Ancient Near Eastern treaties, then, like the Old Testament covenants among human partners, are expanded oath formulae.[2]

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[1] D. J. Wiseman, The Alalakh Tablets (London: The British Institute of Archaeology at Ankara, 1953), text 2, line 2, pp. 26-31.

[2] Ibid., text 2, line 75, pp. 28, 30.

[3] Ibid., p. 31. The text in question is No. 3, pp. 31-32.

[4] Georges Dossin, ARM I, Correspondance de Šamši-Addu (Paris: Imprimerie Nationale, 1950), text 3, pp. 24-27, especially lines 4-8.

[5] In the Hittite vassal or suzerainty treaties, "nur der Vassal beschwört den Vertrag." (Albrecht Goetze, Kleinasien, 2nd edition (München: C. H. Beck'sche Verlagsbuchhandlung, 1957), p. 100.

b. The Covenant between Yahweh and Israel--It has been shown that the covenants among human partners of the Old Testament as well as the treaties of the Ancient Near East in general were constructed around an oath formula. The question to be raised at this point is whether or not the Old Testament covenant between Yahweh and Israel was also based on an oath formula.

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[1] A. Goetze, ANET, p. 205. Both the Hittite and Akkadian texts are found in Keilschrifturkunden aus Boghazköi (Berlin: Staatliche Museen, 1922), Vol. III, pp. 14, 119. For a discussion of the Hittite treaties, cf. Goetze, Kleinasien, pp. 95 ff.

[2] Mendenhall suggests that a formal oath not included in the suzerainty treaties themselves was sworn by the vassal. (Law and Covenant, pp. 34-35.) This is possible, and even likely, but the structure of the treaties themselves prove that the treaties were expanded oath formulae.

The first indication that the covenant between Yahweh and Israel might be centered around an oath formula is the terminology describing this agreement. With this covenant as with the covenants between human partners, בְּרִית is often set in parallel to "oath" or "to swear." Further, in describing what has transpired in the covenants, the narrators often say that one or both of the parties have sworn or taken an oath. One of the clearest examples is in the speech of Moses concerning the covenant in the land of Moab: "Nor is it with you only that I make this covenant and this oath (אֶת־הַבְּרִית הַזֹּאת וְאֶת־הָאָלָה הַזֹּאת׃)...." (Dt 29:13, Eng 14)[1] Similar is Ezekiel's description of Yahweh's covenant with Israel. Yahweh says, "I swore to you and entered into a covenant with you (וָאֶשָּׁבַע לָךְ וָאָבוֹא בִבְרִית אֹתָךְ)...." (Ezk 16:8b) --And Shecaniah confesses the sins of the people to Ezra and says, "Therefore let us make a covenant with our God (נִכְרָת־בְּרִית)....Then Ezra arose and made the leading priests and Levites and all Israel take oath (וַיַּשְׁבַּע) that they would do as he had said. So they took the oath (וַיִּשָּׁבֵעוּ׃)." (Ezra 10:3-5) And again when Ezra makes the covenant, the people "enter into a curse and an oath (בְּאָלָה וּבִשְׁבוּעָה) to walk in God's law." (Neh 10:30, Eng 29) --Furthermore, during the religious reforms of Asa, the people gathered in Jerusalem to enter into a covenant (בַבְּרִית II Ch 15:12), and "they took oath to the Lord (וַיִּשָּׁבְעוּ

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[1] Cf. also Dt 4:31; 8:18 and Hos 10:4 for similar expressions.

לַיהוָה)," and all Judah rejoiced over the oath (הַשְּׁבוּעָה) which they had sworn. (II Ch 15:14-15)[1]

These examples demonstrate that the oath stands at the center of the covenant between Jahweh and Israel, just as it does in the covenants among human partners. As in the "secular" covenants and the extra-biblical treaties, it is said now that one of the parties swore, now that both of them swore, and again that the covenant oath was established by a third party who caused someone else to swear.[2]

If it is indeed true that the oath stands at the center of the covenant between Yahweh and Israel, then one would expect to find examples of the oath formula in these covenants. There should be examples of both elements of the oath formula, the self-curse and the statement of what is sworn. And traces of both these elements can be found in the reports of the covenants. Even when Yahweh swears in making a covenant one can see traces of the self-curse. In a reference to the covenant promise to Abraham, one reads: "By myself I have sworn (בִּי נִשְׁבַּעְתִּי), says the Lord...." (Gen 22:16) The content part of this oath is the promise of countless progeny. This oath form as uttered by Yahweh in this covenant is then promissory. Old Testament tradition continued to remember Yahweh's covenant with the patriarchs as a promissory oath,[3] wherein "to swear" was almost the equivalent of "to promise."[1] This covenant promise is seen in the last verse in Micah:

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[1] Cf. also Ezk 20:5 ff., and the comments of Walther Zimmerli, "Ich Bin Jahwe," in Geschichte und Altes Testament, especially pp. 189 ff.

[2] Cf. M. Noth, "Das alttestamentliche Bundschliessen im Lichte eines Mari-Textes," in Gesammelte Studien zum Alten Testament (München: Chr Kaiser Verlag, 1957), pp. 142-54, on the covenants established by a third partyin Israel and in Mari. Cf. also H. W. Wolff, "Jahwe als Bundesvermittler," VT, VI (1956), pp. 316-20.

[3] Cf. Gen 26:3; 50:24; Ex 13:5; 33:1; Nu 11:12; 32:11; Dt 1:8; 6:10, 18; 29:13; &etc.

> Thou wilt show faithfulness to Jacob
> and steadfast love to Abraham,
> as thou hast sworn (נִשְׁבַּעְתָּ) to our fathers
> from the days of Old. (Mic 7:20)

In a report of the covenant of Yahweh with David one sees both the stipulation of what is sworn and traces of the curse formula:

> I will not violate my covenant (בְּרִיתִי),
> or alter the word that went forth from my lips.
> Once for all I have sworn by my holiness (נִשְׁבַּעְתִּי בְקָדְשִׁי);
> I will not lie to David.
> His line shall endure for ever,
> his throne as long as the sun before me. (Ps 89:35-37, Eng 34-36)

Yahweh takes his oath "by his holiness;" the content of the covenant oath is the promise of an enduring line to David.[2] In other examples of the oath which Yahweh swears--either to his people or to David--the "curse" element is also mentioned. The Lord may swear by himself (בִּי, בְּנַפְשׁוֹ)[3] or by his great name (בִּשְׁמִי הַגָּדוֹל).[4]

When Yahweh swears a covenant with any of his people, the emphasis is upon his promise to them. In the covenant ceremony itself, however, the emphasis is upon Israel's promise of faithfulness to Yahweh. A reconstruction of the pattern of the covenant ceremony reveals that this covenant, too, is structured around an oath formula. Though they have employed different methods and have arrived at some different conclusions, both Mendenhall[1] and Baltzer[2] have demonstrated that there is a definite correlation between the pattern of the Ancient Near Eastern suzerainty treaties and the pattern of the Old Testament covenant ceremony. Both began their comparisons on the basis of the study of Hittite treaties by Viktor Korošec.[3] Korošec's outline of the schema of the treaties[4] was summarized by Baltzer--with only very slight modifications--as follows:

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[1] The promise to the patriarchs has itself been the subject of many investigations. Cf. especially J. Hoftijzer, Die Verheissungen an die Drei Erzväter (Leiden: E. J. Brill, 1956), and Kurt Galling, Die Erwählungstraditionen Israels (Giessen: Alfred Töpelmann, 1928), especially pp. 37-68.

[2] Cf. also Ps 89:3-4; 132:11-12 for statements of Yahweh's covenant with David. The relationship between the covenant with David and the Sinai covenant has been considered by L. Rost, "Sinaibund und Davidsbund," ThLZ, 72 (1947), pp. 129-134. The content of the Sinai covenant is seen in the expression of Yahweh to Israel: "I will be your God and you shall be my people." The content of the Davidic covenant is the promise of an enduring dynasty. (pp. 129-30.)

[3] Jer 49:13; 51:14; Gen 22:16.

[4] Jer 44:26.

1) Die Präambel
2) Die Vorgeschichte
3) Die Grundsatzerklärung über das zukünftige Verhältnis
4) Die Einzelbestimmungen
5) Die Anrufung der Götter als Zeugen
6) Fluch und Segen.[5]

Baltzer then shows that the Old Testament Bundesformular contained elements similar to this Near Eastern Vertragsformular.[6]

It has already been seen that the general Semitic treaty was essentially an elaborate and refined oath form, based on the self-curse (calling the gods as witnesses), and including the specifications of what is sworn to, usually itemized in great detail. The content of the covenant oath was ordinarily the promise of good will by one or both the parties, given in the form of casuistic sentences. In the schema of the treaties as summarized by Baltzer, then, the call to the gods as witnesses and the curse and blessing are the "curse" element of the oath, while the stipulations of the treaty--parts 3) and 4)--form the content portion of the oath. Therefore since the Old Testament covenant ceremony parallels the treaty form and the treaty formula is a refined oath form, it must follow that the Old Testament covenant ceremony is also an elaborated oath formula. The covenant is then a mutual promissory oath between Yahweh and his people, the former promising blessing and the latter promising faithfulness, usually to stipulations included in the covenant itself.

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[1] Mendenhall, Law and Covenant, and IDB, Vol I, pp. 714 ff.

[2] Baltzer, Das Bundesformular, Part I, pp. 11-100.

[3] V. Korošec, Hethitische Staatsverträge (Leipzig: Theodor Weicher, 1931).

[4] Ibid., pp. 12-14.

[5] Baltzer, p. 20. Cf. also Mendenhall, Law and Covenant, pp. 32-4. For a discussion of these treaties with a full bibliography, cf. A. Goetze, Kleinasien, pp. 95 ff.

[6] Baltzer, especially pp. 29 ff. Cf. especially Jos 24:2-27.

The content of the oath in the covenant ceremony is seen in Jos 24:24: "And the people said to Joshua, 'The Lord our God we will serve, and his voice we will obey.'"[1]

To describe the covenant formula of the Old Testament as essentially an oath formula is not, of course, to exhaust the description of the covenantal forms. This is only to say that the common denominator of the various Old Testament covenantal formulations is an oath formula.

The question of the origin of the Old Testament covenant formula has often been raised. The issue has frequently focused on whether an agreement between equal parties or one between a weaker and a stronger was the earlier form,[2] or yet a third form whereby a third party established a covenant between two others was earlier.[1] However one may answer the question of the relative age of these covenant patterns, all three types of covenantal agreement have developed out of the simple oath pattern with its statement of what is sworn and a self-curse formula. Furthermore, one may safely conclude that he is nearer the origins of the Old Testament idea of God's covenant with Israel when he deals with the Israelite covenants among human partners than when he deals with the Hittite suzerainty treaties, or other Ancient Near Eastern treaties. Though the pattern of the covenant ceremony seems to have developed along the lines of the suzerainty treaty, both treaty and covenant are centered around oath formulae.

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[1] Cf. also Baltzer, p. 32.

[2] J. Begrich, "Berit. Ein Beitrag zur Erfassung einer alttestamentlichen Denkform," ZAW, 60 (1944), pp. 1-11.

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With the information about the contracts and covenants before us, we should now be able to draw some conclusions about the relationship between the contract forms and the various forms of covenants. Is Bentzen[2] correct in using the terms "covenant" and "contract" almost interchangably? We have seen that "covenant" is a broad category in the Old Testament, including such disparate formulations as the covenant on Sinai, the covenant renewal ceremony, and private agreements among individuals and tribes.

"Covenant" is a broad category, but it is not broad enough to include the contracts of the Old Testament. Baltzer has correctly pointed out that the term בְּרִית is broadly applied in the Old Testament to many kinds of agreements, but it is not correct to say that בְּרִית applies to as many different types as does the German Vertrag.[1] Covenant and contract are related but distinct categories. There are clear formal distinctions between covenants and contracts not only in Israel, but also throughout the Ancient Near East.[2]

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[1] H. W. Wolff, "Jahwe als Bundesvermittler," VT, VI (1956), pp. 316-20. Cf. also Noth, Gesammelte Studien, pp. 142-54.

[2] Bentzen, Introduction to the Old Testament, Vol. I, p. 210.

The formal distinction between these categories has resulted from the fact that the covenant formula is based on the oath pattern. The covenant, being solemnized by a conditional self-curse, does not require the apparatus of the court. The contract, on the other hand, is not a sworn statement, but a document--or oral agreement--witnessed by outside parties. As such, the contract must be solemnized either by commitment to a writing or legalization by the court. We have looked in vain for oaths in the Old Testament sale contracts. The only possible exception is the oath in Esau's "sale" of his birthright to Jacob (Gen 25:29-34).[3] And though the oath is occasionally found in the Ancient Near Eastern contracts, the parties usually swore in regard to non-intervention, rather than in validation of the sale itself.[4]

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[1] Baltzer, p. 97.

[2] Mendenhall observed: "It is not surprising that international covenants had developed a specialized form of their own in Babylonia and Assyria, which do not have any direct relationship to the forms known in ordinary business or private legal contracts." (Law and Covenant, pp. 26-7).

[3] Cf. above, pp. 117-122.

[4] Cf. the contract cited above, p. 118.

While Old Testament sale contracts are too poorly preserved to justify a comparison of the schema of the contracts with that of the covenants,[1] it is possible to observe the differences in the elements essential to contracts and those essential to covenants. It has been shown that the essentials of an Old Testament contract are an Operative Part describing the transaction, the specification of the property sold, the names of the parties, and some verification of the agreement. Other elements are found, but are non-essentials. The essential elements of the covenants are a statement of what is sworn and a conditional self-curse. The differences, then, are marked. And lest it be supposed that the "content" element of the covenant oath is the equivalent of the Operative Part of the contract it should be pointed out that the Operative Part of the contract always deals with what has happened or is happening, while the content of the covenant oath is always a promise for the future.

The point of the closest parallel between the contract formulae and the covenant forms is the similarity between the witness formulae in the former and the calling of God as witness in the latter. But even though there is some similarity here, the formulations are different. The witnessing formulae consist of a call to the witnesses in the second person, "You are witnesses," and a first person response by the witnesses, "We are witnesses." (Usually simply עֵדִים.) Calling God as witness is usually a third person injunction, "May the Lord be witness." (e.g. Jer 42:5 יְהִי יְהוָה בָּנוּ לְעֵד) The force of the two formulae is quite different also. The witnessing formulae validate an agreement; they are the means of proof. Calling upon God as witness is a self-curse, similar to the expression, "May God judge...." (Cf. Gen 31:49 ff.)

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[1] One has only to compare the schemata of the various Ancient Near Eastern treaties cited above, pp. 75 ff., with the schema of the Hittite treaties and the Old Testament covenant formula as reconstructed by Baltzer (cf. above, p. 174) to see the clear difference between the two kinds of agreements.

There is, however, at least one case of the witnessing formulae from the contract process being appropriated in a covenant ceremony, Josh 24:22. Joshua addresses the people: "You are witnesses against yourselves...." The people give the standard response, "We are witnesses (עֵדִים)." The addition of בָּכֶם , "against yourselves," to the basic witnessing formula shows that this formula is an adaptation from the contract agreement. Ordinarily the call to be witnesses is not addressed to the parties to an agreement, (cf. Ru 4:9-11) but here one of the parties is asked to be witness. It should be pointed out further that the witnessing formulae are standard elements in the oral contracts, while calling God as witness in the covenant oath is but one means of expressing the self-curse. The call to one of the parties to the covenant as witness against himself is even more unusual.

The formal differences between the covenants and the contracts reveal the difference in *Sitz im Leben* between the two. The contract is an economic agreement--even the marriage contract has economic overtones--which must be solemnized before the assembled court; the covenant, being a sworn agreement, does not need the apparatus of the court for its solemnization. The covenant renewal ceremony between Yahweh and Israel is, of course, a cultic ritual. Thus the jurisdiction of the Israelite court did not include covenantal agreements.

To be sure, there has been mixture of the forms of covenant and contract at some points. One thinks of the treaty (בְּרִית) between

Solomon and Hiram of Tyre (I K 5:15 ff, Eng 5:1-18) which is an economic agreement for the exchange of property, containing--as has been shown--many of the formulae of the contract.[1] There are, furthermore, many international political agreements which in some ways resemble the hiring contract. II K 7:6b is a case in point: "'Behold, the king of Israel has hired against us (שָׂכַר־עָלֵינוּ) the kings of the Hittites and the kings of Egypt to come upon us.'" But while such an agreement resembles the international treaty, most such references are the accounts of the hiring of mercenaries, and as such would have conformed more to the pattern of the hiring contract than that of the covenant or treaty.[2]

One may conclude then that the covenant between Yahweh and Israel was formulated on the analogy of the treaties and the other covenants between human partners[3] rather than on the analogy of the contracts for the exchange of property. The covenant, being based on a mutual promissory oath between Yahweh and Israel, is then the pledge of the parties to loyalty. This pledge as the heart of the ideal covenant is expressed by Jeremiah: Yahweh says: "I will be their God, and they shall be my people." (Jer 31:33b)

Excursus:Oath and Covenant Rituals

The Old Testament contains references to many different rituals which accompanied the swearing of an oath and the sealing of a covenant.[1] Very common is a meal between those who swear a covenant oath with one another.[2] Sacrifice is also mentioned in connection with covenants between human partners. (Gen 31:54) Gifts may be given by the parties as a part of the ceremony. (I Sam 18:3-4) Allusions are also made to handshakes which accompany the sealing of a covenant.[3] The oath itself was often taken with one or both hands raised toward heaven,[4] or the hand might be laid on some potent object, such as the genitals (Gen 24:2-4).[5] The cutting up of an animal and other elaborate rituals could have accompanied a covenant between God and man (Gen 15:9-10; Jer 34:18).[6] That this procedure was not unique to Ancient Israel is seen by the expression *ḫa-a-ri-im ḳa-ta-lim*, the "killing of an ass," in the sense "to make a covenant" in the Mari letters.[7]

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[1] Cf. especially the excellent note on this passage by Charles F. Fensham, "The Treaty Between Solomon and Hiram and the Alalakh Tablets," JBL, LXXIX (1960), pp. 59-60.

[2] Cf. II Sam 10:6; II Ch 19:6-7a; II Ch 25:6; Ezk 29:18-20.

[3] Cf. also Begrich, ZAW, 60 (1944), p. 9.

Though these ritual acts which accompany the sealing of a covenant are important, Pedersen's generalization is unwarranted: "The character of these [acts] is not artificial; one inaugurates the covenant with one of the actions in which this pact manifests itself and is constantly being confirmed."[1] It is true that the acts are not artificial, but it is very doubtful that a covenant could be concluded with a non-verbal act. The symbolic act might possibly substitute for the curse element of the oath formula, but the contents must be expressed individually. It is the swearing of the oath itself which is the essential step marking the sealing of the covenant, though this act could be and doubtless was accompanied by many different rituals. The rituals could change, and--to some extent--the formula of the oath, but the oath formula remained the constant factor in the conclusion of a covenant.

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[1] Cf. Pope, *IDB*, Vol. III, pp. 576-7.

[2] Cf. Gen 26:30; 31:54; Ps 41:9.

[3] Ezk 17:18; II K 10:15; Ezra 10:19.

[4] Gen 14:22; Dt 32:4; Dan 12:7.

[5] Pope, *IDB*, Vol. III, p. 576.

[6] O. Kaiser, "Traditionsgeschichtliche Untersuchung von Genesis 15," *ZAW*, 70 (1958), pp. 107-126.

[7] M. Noth, *Gesammelte Studien zum Alten Testament*, pp. 142-54. The text is transliterated and translated by Charles-F. Jean, *ARM* II, *Lettres Diverses* (Paris: Imprimerie Nationale, 1950), pp. 82-3.

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[1] Pedersen, Israel, Vol I/II, p. 304.

CONCLUSIONS

a. Contract Formulae--This investigation has shown that the Old Testament contains a wealth of formulae which were used in the contract process. These forms are either stereotyped expressions commonly used in similar circumstances, technical terms, or speeches in a typical pattern. The formulae from the ceremony of property transfer come from the two stages of the process, the Legal Negotiations or the solemnization of the contract.

A legal process could be initiated with a formal summons "to sit" in court, or by simple polite amenities. The Legal Negotiations proper were instituted with a Purchase Request issued by one of the parties. Whether the Purchase Request was addressed to the owner or to the seller, it was cast in a firmly established mold.. Negotiations could be cut short if the reply to the Purchase Request was a refusal to buy or sell. Such refusals, like other Hebrew refusals, were stereotyped only in the sense that they used the form of the request and added the negative particle. But negotiations could be continued if the response to the Purchase Request was a speech by the party addressed in the request. Negotiations then proceeded with speeches by both parties. These speeches may be loosely classed as bargaining forms, for the aim of each party in these addresses is to make the settlement most satisfactory to himself. There are examples of a more vigorous type of bargaining in the Old Testament, haggling formulae. The negotiations were concluded when agreement was reached and expressed, usually by a statement of price by one of the parties or an acceptance of terms.

There are examples in the Old Testament of two distinct but analogous means of solemnizing sale agreements, the written contract and the oral contract ceremony. Both employed similar formulae. The commitment to writing in the presence of witnesses or the solemn legal ritual of the oral process legalized the transfer of property. The oral ceremony was a contract no less than the written document.

The most important element of the sale contract was the Operative Part, the description of the transaction in terms of a Purchase or a Payment Formula. The contract also included the names of the parties and a description of the property, usually only by the name of the owner. Constituent elements of the oral contract were the witnessing formulae, which included the call to the observers to be witnesses, and their acquiescence to the request. Other formulae are attested in the Old Testament contracts. The phrase "for the full price" was common in the Ancient Near East, and is found in Old Testament land transfers. The inclusion of this formula in the contracts indicated that full ownership was transferred, and that no debt remained. There are also traces of a "date formula" in the Old Testament contracts.

There are many other economic and legal formulae in the Old Testament related to the forms of the sale contract. The formulae of the hiring contract were similar to the expressions and the pattern of the Legal Negotiations, but there is one major difference between the hiring process and the sale process: The hiring contract was not solemnized before the court, and did not even require the presence of witnesses. Thus though there were speeches by the employer and the employee like those by the buyer and seller in the Legal Negotiations, no contract ceremony followed the hiring negotiations.

The formulae of the marriage process in Israel were very closely related to the forms of the sale contract. The marriage formulae reflect two ceremonies, the betrothal ceremony and the marriage feast. The former was the legally effective stage of the marriage, and took place before the Israelite court. This ceremony involved speeches by the parties to the agreement, the groom or his representative (usually his father) and the guardian of the bride.

The covenant is another type of agreement which has often been loosely classified with the contract. A comparison of the forms of the covenant with the contract forms indicates, however, that covenants were not contracts. Both in terms of form and content they were related but distinctively different types of agreement. Old Testament covenants, both those among human partners and those between God and man were structured around an oath formula. The pattern of the contract formulae is quite different, primarily because the contracts are witnessed agreements and the covenants are mutual pledges of loyalty, solemnized by an oath. The covenant between God and his people is understood in the Old Testament on the analogy of covenants among men and international treaties rather than on the analogy of economic contracts.

The Hebrew contract formulae clearly reflect their Sitz im Leben in the economic and legal life of Ancient Israel. They illustrate that the contract ceremony was a long, complicated, formalized, and essentially oral ceremony before the Israelite court.

b. The Functions of the Israelite Law Court--At the outset it was observed that the Israelite law court dealt with a wide range of community problems and needs.[1] The main activities of the court may now be outlined. Some distinctions between the various activities of the court will then need to be drawn in order to elucidate the full jurisdiction of the court. Boecker attempted such a distinction by separating the functions of the court into the categories Strafprozess and Zivilprozess. He drew the distinction on the basis of the gravity of the offense: "So bezeichnen wir als Strafprozesse diejenigen Verfahren, die sich mit Vergehen befassen, die die Todesstrafe nach sich ziehen (Mord, Gotteslästerung, Ehebruch usw.). Die übrigen Verfahren fassen wir unter der Bezeichnung Zivilprozesse zusammen."[2] This distinction needs refinement on two points. In the first place, the criminal procedure includes all those trials which may result in the punishment of an offender, not just those worthy of the death sentence.[3] Secondly, there are at least two distinctively different types of "civil" process before the court. One is the civil lawsuit and the other is the notary function of the court in confirming transactions.

The court then functioned in three main areas: the criminal trial, the civil lawsuit, and the notary capacity. To be sure, this terminology is modern and the distinctions themselves are not actually attested in the Old Testament. The distinctions are justified, however, on the basis of the different ways the court functioned and as a means of understanding the full jurisdiction of the court. Each of these functions may now be considered in turn.

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[1] Cf. above, p. 6.

[2] Boecker, p. 25.

[3] Cf. Dt 25:1-3 for an example of a punishment meted out by the court short of the death sentence.

The *criminal trial* in Ancient Israel has been the subject of much scholarly investigation,[1] which need not be rehearsed in detail here. In the criminal process, an accuser brought a charge against the accused, who defended himself with various speeches, first of all before the court had convened. If the affair was not resolved out of court and the charge dropped, the speeches continued before the assembled legal body in the gate of the city until a verdict had been reached and pronounced by the court.

The *civil lawsuit* proceeded in much the same way, the major distinction being that the adversaries were not accuser and accused, but simply rival claimants to some right. The term ריב is applied to both procedures. The pattern of charge and countercharge, claim and counterclaim was the same in both cases.[2] The subjects of the lawsuits were property disputes, custody suits, and such affairs as the refusal of a man to perform the duty of the *goʾel*.[3]

The pattern of the civil *rīb* is seen in many texts of the Old Testament. One of the best examples is the disagreement between the two harlots brought before King Solomon. (I K 3:16-28) The first woman tells the king that the two of them live in the same house, and that each gave birth to a child. The second woman's child had died in the night because she lay on it, but she then took the first woman's child and put the dead child in its place. When the first woman discovered that the dead child was not hers, the dispute arose which continued before the king: "But the other woman said, 'No, the dead child is yours, and the living child is mine.' Thus they spoke before the king." (I K 3:22) Solomon announces that he will settle the dispute by dividing the child in two, whereupon the true mother offers the child to the other harlot in order to save its life. Then Solomon pronounces the judgment of the suit: "Then the king answered and said, 'Give the living child to the first woman, and by no means slay it; she is its mother.'" (I K 3:27)

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[1] Cf. especially Boecker, *Redeformen*, for a full discussion of the pattern of the trial and the formulae which were employed by the participants. Cf. also Begrich, *Studien zu Deuterojesaja*, pp. 19-42; L. Köhler, *Deuterojesaja Stilkritisch Untersucht* (Giessen: A Töpelmann, 1923), paragraphs 83-87; Köhler, *Hebrew Man*, pp. 127 ff.

[2] For a discussion of a similar pattern in the civil suits of the Ancient Near East, see Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, pp. 87 ff.

[3] Cf. Dt 25:5-10.

This suit is unusual in being heard by the king himself,[1] but the pattern of the controversy is true to the plot of the lawsuits before the local courts in the gate of each city. The judgment will have ordinarily been pronounced by the court, that is, the full-fledged citizens present in the gate, though other means of settlement are mentioned:

> The first party appears right in his suit,
>   but the other comes and examines him.
> The lot (הַגּוֹרָל) puts an end to disputes
>   and decides between powerful contenders. (Prov 18:17-18)

But the use of the lot here is clearly a device to solve a suit which the court is not able to decide, rather than the ordinary means of resolving controversies. The pattern of both the civil and the criminal trials is seen in the first verse: One states his case and the other examines him, or presents his side of the case. The formulae of the trial will have followed this schema.

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[1] But cf. II Sam 15:1-6 and II K 8:1-6. And Moses as the leader of the people appoints judges to hear the pleas of the people, but if the case is too hard, it is to be brought to Moses (Dt 1:9-18).

The other "civil" function of the Israelite law court was the *notary function* of the court in validating transfers of property. It has been shown in detail[1] how sale contracts were solemnized before the court, and how even legal negotiations for transfer might take place before the legal body. This notary jurisdiction, we have seen, extends to marriage contracts as well as sale contracts. But this jurisdiction did not extend to hiring agreements or to covenants. The notary process before the court was not similar to the *rīb* pattern, but followed the outline of negotiations followed by the solemnization of the agreement. The primary function of the court was to observe the agreement and act as formal witness. The main speech of the court was the response, "We are witnesses," to the formal call to be witnesses, but the parties could ask the participation of the court in the negotiations themselves.[2]

All these functions of the Hebrew law court are drawn together into the purpose of the court, the resolution or prevention of strife in the community. The court notarizes contracts in order to prevent disagreement over transfers. But when disagreements arise, they are settled by the legal body acting in another capacity.

c. History of the Contract Forms--Very few conclusions can be drawn about the sources of the Israelite contract forms and the history of the inner-Israelite development of these forms. This is not because these are unimportant issues, but primarily because the Hebrew evidence is too meagre to warrant conclusions about sources, influences, and development. There are many parallels between Israelite forms and those of other ancient cultures, some of which have been noted in the course of the investigation. But there are too few examples of Hebrew contracts to be precise about influence, or even to identify the distinctive Israelite forms.

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[1] Cf. above, especially Chapter II.

[2] Cf. Gen 23:8, and above, p. 28.

It should be pointed out, however, that in spite of some wide differences,[1] the Israelite forms match the Akkadian contracts from Ras Shamra perhpas more closely than most of the other contracts. One thinks especially of the similar "date formulae," and the simple property descriptions in both types. These parallels are not surprising in view of the geographic proximity of the two cultures. But by and large the formulae and technical terminology used in the Israelite contracts are the common property of the legal tradition of the Ancient Near East in general.

Two distinct stages in the development of contracts can be clearly discerned both in Israel and the Ancient Near East in general, the oral contract and the written contract. But tracing this transition is just as difficult as it is easy to recognize that it took place. Oral contracts are clearly the more primitive type. That this is so is seen by the fact that the written document did not replace the verbal agreement in the Ancient Near East, but only recorded the oral agreement. The written documents repeatedly allude to verbal agreements. The Aramaic agreements, for example, often refer to what each of the parties "said," and usually contain a dictation clause which proves the existence of the verbal agreement.[1] Such allusions to verbal agreements are common throughout the Ancient Near East,[2] showing that the written contract has only substituted for the oral solemnization of the agreement, not for the oral ceremony. The Israelite oral contracts, then, illustrate an earlier stage in the development of contract forms than their written Babylonian counterparts which are centuries older.

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[1] The most obvious difference is the fact that the Ras Shamra contracts are predominantly royal documents, many even validated by the king himself.

Written documents, however, should not be precluded even from the earliest stage in the history of Israel,[3] nor oral contracts from the latest stage. The two will have existed side by side for centuries, the written form never completely replacing the oral.

Another aspect of the development of contract forms should be mentioned. The forms of the contracts and the forms of covenants have developed along quite separate and distinct lines in Israel. Neither form grew out of the other, though there are connections between the two at some points.[4] Sale contracts, marriage contracts, hiring agreements, and legal acts of acquisition are one stream of development, both in Israel and in the Ancient Near East in general. Covenants of all types in Israel and treaties in the Ancient Near East are another line of development. The basically different forms of these two categories[5] shows that they have different histories.

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[1] Cf. Kraeling, Aramaic Papyri, P 2, lines 1,14; P 3, lines 1,3, 22b; P 4, lines 1,2, 22-23; &etc.

[2] Cf. Speiser, New Kirkuk Documents Relating to Family Laws, Text 3, pp. 33-4; Text 28, pp. 61-62; Text 29, pp. 62-63.

[3] Cf. the early reference to writing, Ju 8:14.

[4] Cf. above, pp. 178 ff.

[5] Cf. above, pp. 176 ff.

Yet another aspect of the history of the forms of the contract in the Old Testament is the appropriation of these forms in poetry, and their application by the prophets. Some of these applications have been noted,[1] but many remain to be examined. The prophetic use of the contract forms remains a vast reservoir which has hardly been tapped. The description of the forms of the contracts is but the first step in understanding these uses.

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[1] Cf. above, pp. 113, 128,129.

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